

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE
3

4 PRASANNA SANKARANARAYANAN,)
5) C24-1745-RAJ
6 Plaintiff,) SEATTLE, WASHINGTON
7 v.) January 21, 2025
8) 9:00 a.m.
9 DHIVYA SASHIDHAR,)
10) EVIDENTIARY
11) HEARING
12 Defendant.) Day 4

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VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE RICHARD A. JONES
UNITED STATES DISTRICT JUDGE

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1 THE CLERK: We are resuming our evidentiary hearing
2 in the matter of Sankaranarayanan versus Sashidhar, C24-1745,
3 assigned to this court.

4 THE COURT: Good morning. We'll continue the trial
5 with the continued cross examination of Dr. Poppleton.
6 Please have him step forward.

7 LONDON POPPLETON

8 Having previously been sworn, testified further as follows:

9 THE COURT: The witness is still under oath. Resume
10 your examination, counsel.

11 MR. MIN: Thank you, Your Honor.

12 CROSS EXAMINATION (Cont.)

13 BY MR. MIN:

14 Q You didn't perform any psychological testing on the child,
15 correct, Dr. Poppleton?

16 A That's correct, counselor.

17 Q You did receive some background information from the
18 mother in the form of written questionnaire answers, correct?

19 A I did, yeah.

20 Q What was the purpose of that?

21 A Just to get a little bit of an idea of some potential
22 history and adversity the child might have experienced.
23 Nothing more.

24 Q I'm going to show you a document that's been admitted into
25 evidence as Petitioner's Exhibit 110, it's Bates page No.

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1 2147.

2 A Okay.

3 Q Page 5 of the document. And this is the questionnaire
4 that you provided to the mother?

5 A That's correct.

6 Q Then she gave you back, with answers?

7 A Yes. I believe she typed them in.

8 Q And at the bottom of Page 5, you see where there's a
9 section that asks, "Has your child or do you suspect that
10 your child has been:"

11 A I do see that, counselor, yes.

12 Q Then she says "no" to physically abused, "no" to sexually
13 abused, "no" to emotionally abused, right?

14 A That's correct.

15 Q She does say the child was neglected, below that, correct?

16 A Yes, she does. She says, "yes." I'd have to recall what
17 she says by looking at it, but I'll just leave it there.

18 Q And she focused on the fact that in her mind the father
19 was focused on his career; is that accurate?

20 A I'm reading that as you're talking about it. Yes, that is
21 correct.

22 Q And then she says, under the last sentence, that "In
23 recent times, however, the father abandoned our child since
24 August 31st."

25 A That is correct.

1 Q Were you aware that the mother had sought and obtained an
2 order of protection against the father, preventing him from
3 having contact with the child?

4 A My recollection of that, and I reviewed my notes here
5 recently, is that was in the process, I think, by the time I
6 was interviewing her. So I do have it noted in there, she
7 was trying to obtain one of those through the state of
8 Washington.

9 Q Okay. But she didn't tell you whether she had obtained
10 that at that time?

11 A No, I don't believe that I knew that at that time.

12 Q And can you just remind us, when is it that you met with
13 the mother?

14 A Well, that's a great question. It would have been around
15 Thanksgiving week, before and right after that week.

16 Q Okay. Are you aware of the American Psychological
17 Association guidelines in forensic reports and forensic
18 testimony?

19 A I am aware of it.

20 Q You're not a member of the APA anymore, correct?

21 A No. I was many years ago.

22 Q Would it be fair to say you did not employ, use, or follow
23 the APA forensic guidelines in this case?

24 A For what purpose?

25 Q For what purpose, meaning as an ethical guideline to

1 employ in forensic evaluations.

2 A Well, you have to look at the purpose those are applied
3 to. So if you're asking if I did an evaluation with an
4 opinion on the matter, I don't think that they could be
5 applied, given the limitations that I had. But that's not
6 what I did. So I'm not what you're referring to.

7 Q Okay. AFCC Guideline No. 13 deals with forensic virtual
8 evaluations, correct?

9 A I would have to look and see, but I believe that's in
10 there.

11 Q That requires informed consent when evaluating via Zoom,
12 correct?

13 A I'd have to look at that to recall. If you have that in
14 front of you, I can do that. But I would assume that's the
15 case.

16 Q Did you obtain informed consent when you evaluated the
17 mother and the child by Zoom?

18 A Yeah. There was a conversation with the attorneys and an
19 expectation that that would happen that way. It was all laid
20 out very clearly.

21 Q Did you get the informed consent from the mother or from
22 the mother on behalf of the child?

23 A Yeah. There was a very clear understanding of how that
24 would be happening. And she voluntarily engaged and
25 voluntarily engaged her child in it. Then I talked to her

1 child about it and got his assent about it, too.

2 Q Did you note that in your report that you got the assent
3 of the child to interview him over Zoom?

4 A I don't know if that's required to be put in the report,
5 but I don't believe it's in there.

6 Q When you say this was the understanding, this was the
7 understanding of whom? Between you and the mother's lawyers
8 or between you and the mother?

9 A Well, everything happened through her representation, so
10 -- and then she engaged in that from all points of view in a
11 voluntary way.

12 Q We talked a little bit last time about the MMPI test,
13 correct?

14 A Yeah. You asked a couple questions about that, I recall.

15 Q When you have used it in other cases, do you prefer the
16 MMPI 2 or 3?

17 A I like the 2. I think it is phasing out. But that's my
18 -- that's the one I prefer.

19 Q Why is that?

20 A I think it's a richer test. I think it has a stronger
21 research base behind it. There's at least some child custody
22 norms that I'm familiar with on it. And I don't view the
23 updated version as having those things.

24 Q Okay. What other tests are -- were available to you that
25 you could have used as part of this evaluation, if given more

1 time?

2 A If I was given more time and given more latitude to
3 conduct an evaluation that would lead to an opinion, which is
4 what path you're going down, it's a hypothetical, I might
5 have used the Child Behavior Checklist. I might have used an
6 MMPI. I'm not really sure about that. I'd still have to go
7 look at the norms on that. But that might be what I'd use.
8 I often will use a brief screener IQ test just to check for
9 any potential problems. That's typically what I use.

10 Q The last part I didn't catch. You would use an IQ test to
11 check for potential problems?

12 A Problems with IQ. It's a screener that I use.

13 Q And you also mentioned the Child Behavior Checklist?

14 A Yeah. It's a very commonly used test. I use it quite
15 often.

16 Q Can you explain that Child Behavior Checklist, please?

17 A Yeah. It's a test that goes into probably two primary
18 domains. It looks at areas of competency, like educational
19 attainment and how well they do, what sports and activities
20 they're in, and how well they do those things. And it has
21 ways of scoring that towards that aim of looking at
22 effectiveness in different domains of life.

23 Then there's another domain of it that looks more at
24 resiliency type of domains. Those could be things like
25 internalizing problems, like emotional difficulties, or

1 externalizing problems, usually things that manifest in
2 behavior. It's just a good measure to get an idea of a
3 child's competency and resiliency.

4 Q Why were you not able to employ the Child Behavior
5 Checklist in this case?

6 A I think in this particular case I don't believe that the
7 aim was to ultimately provide an opinion or do an evaluation;
8 it was to identify an issue and provide some potential
9 education to the court that might aid in analyzing the
10 evidence in this particular case. So it was just a different
11 process.

12 Q So were you instructed by the mother's attorneys not to
13 provide an opinion in this case?

14 A No. I wasn't instructed to not provide an opinion. I
15 think the hope for counsel in many cases, and there's often
16 demands placed on psychologists to do this beyond their data,
17 is that maybe I would do something like that. But the
18 procedures are inherently -- have inherent limits and would
19 preclude me from providing any opinion on it.

20 Q But you said before that the aim was to educate, not
21 provide an opinion. So I'm curious, where did that aim come
22 from? Was that self-imposed? Or was that a mandate or
23 instructions from the mother's counsel?

24 A I think that's a great question. I think -- I'm not
25 really sure, when I think back on it. But the best I could

1 probably answer that question is, is that at some levels of
2 involvement of a psychologist, that's what can be provided,
3 is information that might meet a criteria of helpfulness.
4 Other levels of -- through agreement or involvement in the
5 case, can extend itself further to be able to provide
6 opinions on particular matters, depending on what has been
7 offered and asked and agreed to going forward.

8 In this particular case, I don't recall any particular
9 conversation that occurred, other than the best that I could
10 do is provide some information that would be helpful to the
11 trier of fact.

12 Q So your testimony, then, is that what counsel asked you is
13 to provide information to the finder of fact, not provide an
14 opinion; is that fair?

15 A I think my answer is, I don't recall any particular
16 conversation about that. I think it was more fluid around
17 the nature of my involvement and what I'm able to provide.
18 But I don't recall any particular directive that was given.

19 Q Well, but when I asked you why you didn't employ the Child
20 Behavior Checklist, your answer was because that was not the
21 aim of this case, which was not to provide an opinion, but to
22 provide information.

23 So it seems to me as though you chose not to do the
24 Child Behavior Checklist because you did not believe that
25 your purpose was to provide an opinion to this court. So it

1 seems as though that was a self-imposed restriction. Would
2 that be fair?

3 MS. SEIPEL: Objection, argumentative.

4 THE COURT: Sustained.

5 Q If you had employed the Child Behavior Checklist, would it
6 be fair to say that it may have allowed you to provide an
7 opinion to this court?

8 A No.

9 Q If you had performed the MMPI-2, a Child Behavior
10 Checklist, an IQ test, and collected other data from
11 collateral methods, would it be fair to say that you would --
12 it would have put you in a better position to provide an
13 opinion to this court?

14 A Yeah. I think that that matters. It's a question of
15 approximating the ability to do that. I think it would be in
16 a better position, but I don't believe it would still allow
17 that to happen.

18 Q But you don't know that unless you do the tests, right? I
19 mean, you don't know whether or not you'd be able to offer an
20 opinion until you collect the data or try to, at least?

21 A That's not true. I think I could tell you that now.

22 Q What would have allowed you to offer an opinion to this
23 court? What amount of data collection would have permitted
24 you or put you in a position to offer an opinion?

25 A I appreciate that question, counselor.

1 If there was an agreement that came where it allowed for
2 there to be a comprehensive view of the case itself -- that
3 would be access to all the parties involved, the ability to
4 generate particular hypotheses under the law, to test those
5 through multiple methods of assessment, to seek and develop
6 hypotheses and entertain those hypotheses with respect to
7 alternative relevant and rival hypotheses, and then to be
8 able to ultimately, through employment of procedures,
9 establish reliable findings that could serve as the basis for
10 an opinion that would be something that would be, I think --
11 in a very succinct way, allow you to do that.

12 Q We may have touched upon this last time, and I apologize
13 if we did, but going through my notes, hopefully they're
14 complete, but --

15 A Yeah.

16 Q -- in your evaluation, did you take into consideration any
17 cultural influences or cultural norms?

18 A Yeah. I tried to listen to mother about those things. As
19 I mentioned, I don't have an opinion on them, on the ultimate
20 issue here. But I did listen to what she had to say about
21 that, and her experience of that, and the influences of that
22 on her and their lives.

23 Q What about the impact of cultural norms or influences on
24 forms of corporal punishment?

25 A I think I listened to mother, particularly about how the

1 issues that were described reverberated through the family,
2 from her perspective.

3 Q So did the mother talk to you about, or did you consider
4 the cultural norms as it relates to forms of corporal
5 punishment that she talked to you about?

6 A So when you're dealing with cultural norms, you're dealing
7 largely with values. And there can be a lot of variance,
8 even between families within the same culture. So I did try
9 to listen very carefully about that and provide some of that
10 in the letter that I wrote. But ultimately that would have
11 to be evaluated by the trier of fact.

12 Q Can you repeat the last part?

13 A Ultimately that has to be evaluated and weighed under all
14 the evidence that is provided. But I listened to it.

15 Q You say you listened to it. But you said you've talked
16 about it in your letter. Can you point to me where, in your
17 letter, you talk about cultural influences or norms as it
18 relates to corporal punishment?

19 A I don't believe that's in my letter. I think that had
20 more to do with kind of how individuals are situated within
21 the family and how things like patriarchal influences can
22 play out. That was, I believe, the extent of that.

23 Q I'd like you to focus on my question, not about how you'd
24 like to answer it. But my question specifically is whether
25 you considered cultural norms or influences as it relates to

1 the allegations of corporal punishment in this family.

2 A If it didn't come up, it wasn't considered. And I don't
3 believe that came up.

4 Q You did consider whether the mother shared inappropriate
5 information with the child, though, correct?

6 A I think that was apparent through the conversation with
7 the child. So, yeah, it was on my radar.

8 Q That included conversations or information the child
9 seemed to have about the ongoing litigation and about
10 financial concerns, correct?

11 A Yeah. I think those were the primary issues. They were
12 financial -- yeah, financial and the ongoing litigation,
13 yeah, absolutely.

14 Q If a child had asked you to record one of your evaluation
15 sessions --

16 A Sure.

17 Q -- at the directive of one of the parents, you would agree
18 that it would raise in your mind the possibility of parental
19 influence in the evaluation, correct?

20 A Yeah. It would be one of several possibilities,
21 absolutely.

22 Q And in this case, would it be fair to say that you could
23 not eliminate the hypothesis that the mother had influenced
24 the child during this evaluation process?

25 A Well, I think I observed that there were conversations

1 that took place. I don't think ultimately I was able to test
2 hypotheses against alternative relevant rival hypotheses. So
3 I don't know that it would have gone that far. But I
4 certainly made that observation.

5 Q My question is, you were not able to eliminate the
6 hypothesis that the mother had influenced the child during
7 this evaluation process?

8 A Yeah. I don't agree with the presumption behind the
9 question. You're asking as if I was attempting to test those
10 things. I wasn't. And so I didn't even attempt to do that.

11 Q I don't think that's true. I mean, you had a thought and
12 a hypothesis that you were not able to test that the mother
13 may have influenced the child during this evaluation process,
14 correct?

15 MS. SEIPEL: Objection, argumentative.

16 THE COURT: That's overruled. You may answer that
17 question.

18 A I had an observation about that, certainly. And an
19 observation can lend itself to multiple rival hypotheses, of
20 which one of those could certainly be what you're asking me
21 about.

22 Q Right. So I'm not saying you didn't have other
23 hypotheses, but was one of those hypotheses, that the mother
24 was influencing the child during the coercive this
25 evaluation?

1 A It would be a relevant hypothesis to consider, based on
2 that observation, just by the way these cases are generally
3 looked at.

4 Q Did you consider that as one of many hypotheses?

5 A Well, it would have crossed my mind that way. But I don't
6 believe I was going about testing those things.

7 Q I'm not asking about whether you tested it; I'm asking
8 whether you considered that as one of many hypotheses.

9 A The distinction is relevant between what you're asking me
10 and what I'm saying. But, yeah, it would have crossed my
11 mind, very likely.

12 Q But if you didn't test it, then it would be fair to say
13 that you could not eliminate it as a hypothesis?

14 A You have to test things to eliminate them, yes. So of
15 course, yeah.

16 Q So the answer was "no," you were not able to eliminate
17 that as a hypothesis?

18 A The distinction matters. I didn't attempt to do so.
19 There was no way I could.

20 Q You were made aware that the child lived in the United
21 States from approximately -- well, from age zero -- not
22 approximately -- to approximately age 6, correct?

23 A Approximately.

24 Q He concluded kindergarten in the United States, correct?

25 A I believe so, yes.

1 Q And he concluded the end of pre-K, then the full year of
2 kindergarten in Seattle, correct?

3 A I don't know if I have that level of specificity on that.
4 I think I have more gross years. But I can work with that.

5 Q And he lived in Seattle for a little bit less than two
6 years?

7 A I know he lived there. I don't know how long it was, but
8 it was -- that probably is correct. I couldn't tell you
9 specifically.

10 Q Part of that time was during the COVID pandemic?

11 A I do remember that, yeah.

12 Q And then you understand that the child lived in Singapore
13 from approximately ages 6 to 8?

14 A Yeah. There was a couple years there too. The child
15 described that to me.

16 Q He completed first and second grade in Singapore and
17 started third grade there?

18 A Yeah. That was my understanding from him.

19 Q Okay.

20 And you would agree that a child's developmental stages
21 are important in a case like this when talking about
22 attachments and talking about development and maturity,
23 correct?

24 A I agree with that 100 percent.

25 Q And you would agree that in general -- I'm not asking

1 about this specific child in this case -- but in general
2 children make more meaningful connections in their social
3 life outside of their immediate family between the ages of
4 six to eight, than they do from the ages of zero to six?

5 A Yeah. I mean, children are going to venture out more the
6 older they get. I think that would be a reasonable thing to
7 conclude.

8 Q Once children get into school age, these meaningful
9 connections are more available to them, easier to make, and
10 they're more prone or primed because of their maturity and
11 developmental stage to make those meaningful connections,
12 right?

13 A Yeah.

14 Q Earlier on in life, the meaningful connections are
15 typically reserved for their immediate family and those
16 closest to them?

17 A In early life.

18 Q In early life.

19 A Yeah, they're looking, you know, for the security of the
20 arms of their parents. And as they grow and mature and gain
21 more confidence, they're able to venture out more, and school
22 activities. And I think that trend would be reasonable.

23 Q You mentioned in your testimony that you had reviewed the
24 child's school records. Do you recall that?

25 A I do recall that, yeah.

1 Q It's not listed in your letter, though, as one of the
2 documents you reviewed?

3 A No. I think I just put that there was some things listed
4 in there. And I think those school records were reviewed
5 after the letter, if I remember right.

6 Q Okay. So it was reviewed after the letter. So it had no
7 impact on the contents of your letter when you wrote that
8 letter?

9 A I don't believe so, not from my recollection.

10 Q Okay.

11 A I have to go back and look at what I had and when it was,
12 because some of it gets jumbled up. But my recollection is
13 reviewing that after. I can't recall if that was part of the
14 cache of information I had.

15 Q Did your review of the school records alter in any way
16 your testimony here today compared to the contents of your
17 letter?

18 A No.

19 Q And by testimony here today, I mean also two weeks ago.

20 A Yeah. I get it. I follow. I don't think it changed it.
21 And you can look at the letter and see why it wouldn't, but
22 no.

23 Q Do you recall what school reports or school records you
24 reviewed?

25 A I believe there was some Singapore records in there that

1 had his grades in there and some descriptions of activities
2 he was involved in.

3 Q U.S. school records at all?

4 A I don't recall, honestly, right now.

5 Q So we talked earlier that you did not do any testing on
6 the child, but you also did not seek any collateral
7 information or speak to any collateral witnesses other than
8 the mother about the child's functioning, correct?

9 A The mother and child, and that's it.

10 Q No behavior assessment or emotional assessment completed
11 by the parents in this case?

12 A Not other than that survey you already asked me about
13 today.

14 Q Are you familiar with the term "particularized
15 objections"?

16 A I believe so.

17 Q What does that mean to you?

18 A That they have to have particular reasons for why the
19 particular objection is made.

20 Q And in your interview with the child, can you identify any
21 particularized objections he made to returning to Singapore?

22 A I provided those in the letter. I just tried to provide
23 Your Honor with information from the child's words and that
24 was it, so you would have that to look at fairly rawly.

25 But the reasons had to do with things like a prospect of

1 friends, weather, feeling like the weather was better, having
2 a sense of feeling more like an American citizen, like this
3 might be more like home. And those were the reasons.

4 Q Did you ask him any follow-up questions or discuss these,
5 what you determined to be objections, with him during the
6 evaluation?

7 A I asked him very particularly if he thought that his
8 desires to remain in the United States might have any impact
9 on anybody. I recall that. I think that's in my letter,
10 too.

11 Q Did you ask him any questions about what he meant when he
12 said he feels like an American?

13 A No, other than he just -- that's just what he said, you
14 know. I didn't follow up on that any further than that. He
15 said he feels like this is more of a home and he's more of an
16 American.

17 Q Did you ask him any follow-up questions about what he
18 didn't like about the weather in Singapore?

19 A He said it was too hot.

20 Q In your opinion -- withdrawn.

21 You describe these statements to be, in your
22 understanding, to be a particularized objection; is that
23 fair?

24 A Well, I think you're leading me down those things. But
25 from the definition I gave you, I think all I can tell you is

1 those are the reasons he provided for his expression.

2 Q Are you familiar with -- withdrawn.

3 Isn't it true that the psychological literature
4 supports the proposition that children who have been exposed
5 to removal by one parent away from the other parent, will
6 often ally themselves with the taken parent?

7 A Repeat your question because I want to make sure I really
8 understand that before I answer it.

9 Q Isn't it true that the psychological literature supports
10 the proposition that children who have been taken from one
11 parent -- taken by one parent from another parent will often
12 ally themselves with the parent that took them?

13 A Okay. I appreciate you repeating the question. I was
14 going to try to repeat it myself before you did that.

15 The psychological literature on alignment with one parent
16 over the other actually lists out a host of risk factors.
17 One of those could certainly -- one of those influencing
18 factors could certainly be the physical removal from access
19 to the other parent. One of many.

20 Q In your report you did describe that the child himself
21 described meaningful time with his father, correct?

22 A That's correct.

23 Q Did you explore this with the child during your
24 evaluation?

25 A Yeah, I believe I -- and I think this is in my letter,

1 too, if I remember right. But it sounded like kind of
2 wrestling or roughhousing, play, just things you would find
3 between a father and a son.

4 Q You were unable to observe any parent/child attachment --
5 well, I'll withdraw the question. You were unable to observe
6 any father/child attachment during your evaluation process?

7 A I think that's fairly well established, my limits to
8 access to this case.

9 MR. MIN: Your Honor, if I could just have one
10 moment.

11 THE COURT: You may.

12 MR. MIN: No further questions, Your Honor.

13 THE COURT: Redirect?

14 MS. SEIPEL: Yes. Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. SEIPEL:

17 Q Dr. Poppleton, when you were retained on this case, did
18 you guarantee an outcome to my client?

19 A No, I did not.

20 Q The last time we were in trial here, Mr. Min asked you
21 quite a few questions about best-interest evaluations.

22 A Sure.

23 Q Why did you not complete a best-interest evaluation in
24 this case?

25 A I don't think it would be possible to do that, given the

1 access to the case.

2 Q Is it in a child's best interests to grow up in an
3 environment of abuse?

4 MR. MIN: Objection, leading.

5 THE COURT: Sustained.

6 Q In an evaluation or assessment you conduct, is a finding
7 of abuse in a court proceeding a finding of fact that you
8 could rely on?

9 A Let me repeat your question. If there's a finding of
10 domestic violence or child abuse -- I mean, that's a broad
11 question -- would that be something that would be relied on
12 in making an ultimate issue recommendation? Is that your
13 question?

14 Q Would you consider a finding of fact or a finding of
15 domestic violence or abuse in assessing something in a case?

16 A Yeah, I think you would certainly weigh that.

17 Q You testified on cross examination that a child who is
18 depressed would be more vulnerable or suspect to a grave risk
19 of harm under the Hague. Why is that the case?

20 A There's an interaction -- these are often questions of
21 capacity. So you have to kind of go back to the model we
22 used for capacity, and that has to do with a parent's ability
23 to meet the daily and emotional and developmental needs of a
24 child. And domestic violence is a risk factor to that, that
25 exists within a parent where it exists. And again, you need

1 to look at those carefully. But there's another piece to
2 that capacity model, and they call it the "interactive
3 component" or the "interactive factor." And that has a lot
4 to do with the vulnerability, the competency, the resiliency
5 of the child involved, and how that might be interacting with
6 a potential capacity problem that might be defined as the
7 presence or risk of ongoing domestic violence.

8 And so some children can weather those risk factors better
9 than other children can. And so if you have a child who
10 maybe has some internalizing problems or externalizing
11 problems, you know, or maybe they're suffering in school or
12 socially in some way, you can broaden that out even further.
13 You would have to consider -- and you have to take every case
14 at its facts -- but you'd have to consider that that could
15 increase the vulnerability of that particular child to the
16 impacts of exposure to domestic violence, or family violence
17 -- child abuse. I think you just said "abuse," so I don't
18 mean to narrow that.

19 Q You said a number of times throughout your testimony that
20 you're not giving an opinion in this matter as to whether or
21 not there's a grave risk in the case. So I just have a few
22 follow-up questions to that.

23 A Sure.

24 Q If the court finds that father sexually abused mother,
25 would you have concerns about risk?

1 A Yeah, if there's a sexual-abuse issue in the case, that
2 would -- and there's a finding around that, that would fall
3 under the domain of intimate-partner violence. And
4 specifically of sexual assault flavor. And that could --
5 would need to be considered as how it would impact the
6 caregiving environment that a child is being raised in. And
7 that would be something that would be on the table as
8 relevant.

9 Q Was there any sexual abuse reported by mother that gives
10 you concern in this case?

11 A There was lots of -- one of the larger domains that she
12 talked about had to do with what she reported to be pressured
13 sex, punishment if she didn't submit, a lot of things that
14 rose to the level of abuse, related to sex, whether it be
15 anal sex that she didn't consent to, or if it was related to
16 not having sex with her husband and being kicked in the back
17 after it, or having the child shaken, or whatnot, you know,
18 in form of retribution for not engaging in sexual behavior
19 with him. So it was certainly something that she outlined in
20 quite a bit of detail.

21 Q You said just now that sexual abuse was one of the domains
22 that mother talked about. What other domains did you touch
23 on that might give you concern in this case?

24 MR. MIN: Objection. Your Honor, this is outside the
25 scope of cross. This is direct examination, not redirect.

1 THE COURT: Let's focus, counsel.

2 Q Mr. Min asked you about your consideration of cultural
3 norms in this matter. Does mother's report of her Indian
4 culture play into your assessment or concerns in this matter?

5 MR. MIN: Objection. Outside the scope of cross.
6 The question I asked was about corporal punishment, not
7 generally about cultural norms, although that's what the
8 witness wanted to answer.

9 THE COURT: You opened the door. I'll allow
10 latitude. Please proceed.

11 Q Does mother's report of her Indian culture play into your
12 assessment or concerns on this matter?

13 A Well, she reported many things related to that. I tried
14 to capture those as best I could in the letter that I
15 provided to recount that history. But certainly I think you
16 would need to consider those things.

17 Q Why are you no longer a member of the APA?

18 A There's just -- there wasn't a reason for me to continue
19 to be a member. I'm an AFCC member. That fits more what I
20 do, it's catered more to my community and the work that I do.
21 And that's where I gain the most benefit from. And that's
22 where I devote my attention. So I'm a member of a different
23 organization.

24 Q You testified a little bit on cross examination about the
25 Child Behavior Checklist. What exactly is the Child Behavior

1 Checklist?

2 A It's just a measure that -- I'll add a little bit more
3 detail to it, since I believe I was asked partially that
4 question on cross. But it's a measure that a parent fills
5 out based on their observations of their child on a kind of
6 Likert scale, at least on one part of it. And it allows you
7 to compare where the child falls across many different
8 domains of competency and resiliency, as compared to other
9 children their age.

10 And so it can tell you if a child, compared to other kids,
11 maybe has conduct struggles, attention problem, that's
12 another one on there. There's a -- anxious -- I think it's
13 anxious withdraw scale, or anxious depressed and then
14 depressed withdrawn, I can't remember, I always have to look
15 at it to get my memory straight on it. But there's a variety
16 of scales that tells you where a child falls compared to
17 others within their local peer group. Or it's really more of
18 a peer group, I would take away "local," but more of a peer
19 group. That was a misstatement.

20 Q How is a checklist able to give you information regarding,
21 for example, conduct struggles, attention problems, whether a
22 child is anxious or depressed?

23 A It's called the "checklist." And there are things that
24 you would check on it, as a checklist, certainly. However,
25 there is -- the last two pages of it have a small scale

1 related to a variety of items that would relate to a symptom
2 presentation of a child. And so they are rated on that on,
3 "not a problem," or "sometimes a problem," or "a problem."
4 It's worded something like that, I'd have to look at the
5 actual checklist to tell you exactly. But that's the gist.

6 Then those numbers are applied and tabulated in a way to
7 where you can get a score, and then you can place a child on
8 a distribution that compares them to what would be a
9 normative sample to show where they fall compared to those
10 other kids.

11 So you can see if they fall low on those scales, or if
12 they're kind of right in the middle, or average -- average,
13 maybe emotional experiences other kids their age, or if
14 they're on the high end of that distribution.

15 And typically on the higher end of the distribution would
16 indicate a greater likelihood of there being a problem with
17 that particular scale.

18 So that's how they do that.

19 Q Mr. Min asked you about your consideration of mother
20 sharing what he called "inappropriate information" with the
21 child. What is your assessment of whether mother is sharing
22 inappropriate information with the child?

23 A So I think that there is a right way and wrong way to
24 answer that question. I don't have an actual assessment of
25 where and what that's about, as a conclusion. I have tried

1 to -- despite efforts to push me into doing that -- I have
2 tried to maintain a position that I don't have a conclusion
3 about that. But there are multiple things that would be
4 likely things to consider as it relates to that issue that a
5 psychologist, maybe with much more access to the family,
6 might be able to answer, or the trier of fact, judge, would
7 be able to maybe analyze as it relates to that particular
8 issue.

9 Q You said there would be things to consider. What things
10 would you consider?

11 A Typically when there are behaviors of a parent, there are
12 attitudes of a parent -- a lot of it is rooted in attitude.
13 There are words of a parent that are oriented towards what we
14 often call "gatekeeping" or closing the gate on a
15 relationship. And it can be done through words, deeds, even
16 feelings communicate things as well; that is often the domain
17 that that's looked at under.

18 Now, gatekeeping has many facets to it, and this is why
19 it's not that simple. There is what's considered unjustified
20 restrictive gatekeeping. And then there's other terms for an
21 alternative hypothesis to that. And that would be justified
22 or protective gatekeeping.

23 And that is where the issue of domestic violence comes
24 into play. So it's not -- you really have to answer -- and
25 this is why that question of domestic violence is of uber

1 importance in every case. But if there's a domestic violence
2 matter at play, it leads -- from an allegation standpoint,
3 you have to figure that one out first because of the way that
4 it can color everything else.

5 So if there's a history of domestic violence and a parent
6 is oriented towards gatekeeping, and it's a function of that
7 history of abuse, then you would have to look at that as
8 potentially falling into a protective gatekeeping role or a
9 justified gatekeeping position.

10 If there's not, you know, and not really a risk, you know,
11 to be had or established, then it might be an unjustified
12 gatekeeping conclusion that you might be looking at in the
13 alternative to that.

14 And so answering the question of domestic violence would
15 be the very first thing you would have to do to even begin to
16 entertain that gatekeeping question at all. And that can
17 relate also to the influence that's discussed. And that
18 could be the conversations that parents are having with
19 children.

20 So it's like -- it's complicated because in our domestic
21 relations world, the rules get turned upside down. You might
22 have a malignant -- hypothetically speaking -- a malignant
23 pedophile across the street who is on a registry, and as a
24 parent you tell your kid: Look, you need to stay away from
25 that household because there's some concerns that I have

1 about you going, walking by there, or doing this, or just
2 watch out for this person; nobody says anything about that.
3 They're applauded for their vigilance and concern. But if
4 that person happens to be the other parent, well, now we've
5 got a huge mess on our hands. And that's where a lot of
6 arguments can come out, be used against somebody who might be
7 a victim of abuse, related to their gatekeeping behaviors,
8 their words that they express towards their child, and the
9 potential reality that the causal reason for that could
10 actually be the abuse itself, and not the fact that you have
11 a parent who's scorned or vindictive.

12 It's a very difficult analysis to perform and one that has
13 to be done with a lot of care because if it's not done that
14 way, it also is -- the case can also be at risk, and this is
15 a common complaint about it, and that is that using the
16 gatekeeping argument, sometimes they call it "alienation,"
17 against a parent who is doing it as a function of domestic
18 violence is a way that victims of domestic violence get
19 perpetually abused throughout the course. And so that is why
20 that analysis has to be done very carefully. And the
21 domestic-violence analysis has to be done first,
22 unequivocally.

23 Q How would you conduct the domestic-violence analysis?

24 A Well, I'd certainly be taking information from multiple
25 sources and testing hypotheses about it through my various

1 methods of assessment. And I'd certainly be doing that under
2 good theory about what we understand about domestic violence
3 and the different typologies of that, things like potency,
4 primary perpetrator, the impact it can have on a parent and
5 how they respond, the potential exposure that that can create
6 to the child, either directly or indirectly, through the
7 aftermath of such.

8 You might even, if you have findings of concern across
9 factors like that, you might be looking also at things that
10 might mitigate the risk. And that can have to do with things
11 like a parent's insight about it, meaning a perpetrator -- if
12 you have established that there's one -- a perpetrator's
13 insight, you know, their responsibility taking, how they've
14 done -- what they've done to repair that going forward.

15 It's really no small task to tackle. And so -- but it is
16 really that important.

17 Q You were asked about psychological research surrounding
18 what may cause a child to align themselves with one parent
19 over the other.

20 A Sure.

21 Q And you mentioned that there were other factors to
22 consider other than the one that Mr. Min asked you about.
23 What are those other factors that might be considered?

24 A Yeah. There's many things that contribute -- potentially
25 can be contributors to that, from a strictly literature-based

1 perspective, right?

2 So you could look at history of family violence, would be
3 one of them. History of conflict within the family. Primary
4 caregiver is certainly one that could contribute to that.
5 There can be where children fall on an attachment hierarchy
6 with their caregivers that can have an influence on it. You
7 can get the attitude and orientation of the parents
8 themselves, towards each other. How the children are
9 triangulated into conflict. There could actually be the
10 influence of other family members, is on that list as well.
11 And I'm just going through a schemata out of Kelly and
12 Johnson's seminal article on this. Litigation. Chronic
13 litigation, I believe, is on that as well.

14 And then you get down into some more nuanced ways that
15 that happens as well. Sometimes children, in the aftermath
16 of domestic violence, or through maybe some of the lack of
17 emotional resiliency of a parent, sometimes they get
18 parentified in cases.

19 And if they are parentified or, in other words, tasked
20 with the job of being responsible for the emotional
21 well-being of a parent, that can also have an influence as
22 well.

23 But that influence, I've seen it go both ways, depending
24 on other factors and how they're interacting with each other.

25 Certainly the physical removal, to your opposing counsel's

1 question, could be something -- people do take off and
2 abscond with their children at times. Or they just take off
3 without hiding, they sometimes just tell the parent. And
4 then the courts have to get involved to try to resolve that.

5 But you do need to look at whether this is -- the
6 literature evolved from that to this gatekeeping framework
7 that I think is a very helpful tool. But you do need to do
8 very careful work at teasing apart whether this is a
9 protective orientation or just one that's completely
10 unjustified and harmful.

11 So those matter. Because the protective orientation
12 really could reasonably be looked at as something that's a
13 protective factor to healthy child development, where the
14 unjustified restrictive approach would be a candidate risk
15 factor to a child's healthy development.

16 MS. SEIPEL: I have no further questions.

17 THE COURT: Further cross?

18 MR. MIN: Yes, Your Honor.

19 RECROSS EXAMINATION

20 BY MR. MIN:

21 Q You talked just now about issues of domestic violence and
22 risk to a child. And then you mentioned that if there are
23 findings of concern, or if there's concern, you might have to
24 look at mitigating risk, right? I just want to make sure I
25 understood your testimony correctly.

1 A Yeah. I'll say it real succinctly because I think that's
2 what you're basing it on, is if you have an identified
3 primary perpetrator with a concerning pattern, let's say,
4 right, then there are sometimes things within the individual
5 perpetrator themselves that would be a risk mitigating -- that
6 could be risk mitigating.

7 That would have to do with insight into understanding
8 their abuse and how they've done it, responsibility taking,
9 and a good orientation towards trying to repair things and
10 make things better for the family, and it had to do with
11 what's contained in the individual themselves. Yes.

12 Q Okay. But besides the internal mitigation of risk, I
13 mean, you would agree that there are external things that can
14 be done to mitigate risk, correct?

15 A There are things that we try to do commonly, yes,
16 certainly.

17 Q So what -- can you give me some examples of what that
18 might be?

19 A Yeah. Sometimes there's orders put in place, orders of
20 protection that proscribe how they'll communicate, if at all.
21 They'll proscribe things like how exchanges will take place,
22 distances to maintain. Sometimes we bring in third parties
23 to serve as case managers. All of them are with variable
24 results, depending on the case. But there are certainly
25 things that we try to do.

1 Q You talked about orders of protection. Possibly
2 supervised visitation would be one?

3 A Yeah. That didn't cross my mind when you asked that
4 question. But if there's concern about the risk to the child
5 in a particular case, supervised visitation is commonly used.

6 Q What about therapeutic visitation?

7 A Yeah. It's different. That's a different mechanism, but
8 it's, in my opinion, a higher level of supervision because it
9 actually allows for some processing to occur that
10 supervision -- straight supervision is going to cut down
11 completely on any conversations that move into a therapeutic
12 area or anything that might relate to any content of the
13 issues that they're dealing with.

14 Q Would it be fair to say that supervised visitation focuses
15 on preventing harm and therapeutic visitation focuses on
16 repairing relationships?

17 A I think that's a fair thing to say. I think that you
18 could find some overlap because I do think contact can be
19 therapeutic also, even without the therapist involved, just
20 if you're looking at it that way. But I think I would agree
21 with the premise behind your question, certainly.

22 Q Counsel asked you, on redirect, whether allegations of
23 abuse of a sexual nature would have an impact on a child.
24 And you mentioned it certainly would impact on the caregiving
25 environment. Do you recall that phrase, "caregiving

1 environment"?

2 A Yeah, I think that's something that should be considered,
3 yeah, in any case where there's marital sexual abuse or rape.

4 Q What do you mean by caregiving environment?

5 A So a family has a task as it relates to a child, and
6 that's to help a child develop on a healthy developmental
7 course. And if things are happening within the family system
8 that's having an impact on a parent's ability to serve in
9 that role to help a child develop well, then that can have an
10 impact on a caregiving environment. And things like rape, or
11 any other controlling or abusive tactics, could certainly
12 have an impact on a parent's ability to do that. And that
13 can be -- it just can create an air or a tension within the
14 environment a child is being raised in.

15 Q Doesn't that presume that the parents and the child are in
16 one environment together, like one household together?

17 A So in coercive-control cases, one of the big concerns is,
18 is that it can extend outside of that, outside of them living
19 together. And the tactics that can often be employed -- and
20 again, these are things that have to be considered -- would
21 be things that would tether parents in some way. It's often
22 kids and money. And so tactics of coercion and control can
23 actually play through those as well, even where they're
24 separate.

25 Then there can be other things, like reputation

1 destruction, intimidation, things that would actually allow
2 for -- there are opportunities sometimes for those things to
3 hatch even also. So they don't have to live together.

4 Q I appreciate your answer, but it sort of goes beyond what
5 your answer was before because the question counsel asked you
6 about was the sexual allegations --

7 A Sure.

8 Q -- the sexual abuse allegations.

9 A Sure.

10 Q And your answer to that was the caregiving environment.
11 So I want you to limit yourself to the allegations with
12 respect to sexual assault or abuse, not about coercive
13 control in general. Okay?

14 A I --

15 Q Let me finish.

16 A Yeah.

17 Q So my question to you is, the idea that sexual abuse and
18 assault that would be ongoing would affect the child's
19 caregiving environment presumes that they live in the same
20 household, correct?

21 A Yeah. Well, for you to -- there has to be some
22 opportunities for sexual assault to occur, right? And so
23 they would have to be together in some way. They don't
24 always have to live in the household together for that to
25 happen. But generally speaking, I think that has been my

1 experience, that that's what happens during the relationship
2 and not after.

3 Q Okay. You were asked some questions about depression and
4 risk factors. But in this case, did you make any observation
5 or gather any information that this child was depressed?

6 A I believe it's at the end of my notes on that. I asked
7 him a little bit about how his mood is, and I can --

8 Q He said he was bored, correct?

9 A Well, he said more than that, counselor. He did say he
10 was bored, certainly. But I asked him a little bit about --

11 Q I'm not asking you to look at your report.

12 A Yeah. Off the gist, he talked about having some mixed
13 moods and them being up and down. And that's at the end of,
14 I think, my notes that were provided through a discovery
15 request.

16 Q You didn't diagnose him as having depression, though?

17 A No. I didn't diagnose anyone in this case, counselor.

18 Q Based upon your observation of the child, would you be in
19 a position to diagnose him as having depression?

20 A No. I didn't do a diagnostic evaluation on this child.

21 Q My question wasn't whether you did a diagnostic
22 evaluation, and let me finish my question. My question is,
23 based upon the information that you gathered, would you be in
24 a position to diagnose him as having depression?

25 A No.

1 Q Do you agree that the issue of gatekeeping is tied to or
2 tethered to the issue of undue influence?

3 A So I think -- I don't know how you're defining "undue." I
4 think there's certainly an impact that it can have on
5 influence. I don't know how you can get around that.

6 Q Sure. You're familiar that undue influence is one of the
7 factors a court has to look at when considering the
8 mature-child objection exception, right?

9 A I understand.

10 Q So you would agree that any information pertaining to
11 gatekeeping or any opinions that one might be able to draw
12 with respect to gatekeeping would be related to something the
13 court would have to determine as it relates to the potential
14 for undue influence?

15 A Yeah. I think when you're looking at a case like this,
16 you need to formulate where the influence is coming from and
17 the impact that that could certainly have. And that's the
18 best information I think I could speak to, either generally,
19 or if I had more access to the case, more specifically.

20 Q Okay.

21 MR. MIN: No further questions, Your Honor.

22 THE COURT: Anything further, counsel?

23 MS. SEIPEL: Very briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. SEIPEL:

1 Q Dr. Poppleton, the things that Mr. Min asked you about
2 regarding mitigation to risk, like therapeutic visitation or
3 supervised visitation, does the literature in your field say
4 anything about how effective these measures are at removing
5 domestic violence?

6 A I think it's quite mixed. I don't think that that has a
7 reliable literature body behind it.

8 I can tell you that the nature of coercive control, if
9 it's what's happening in a case, you always have to put on
10 your radar that there can be a risk of a victim doing things,
11 trying to ward off threats, by appeasing and complying and
12 falling back into the old patterns that existed in the
13 relationship. And that can undermine best attempts at trying
14 to protect and set up structure to do that. It requires a
15 reliance on parties who end up in a cult of two.

16 MS. SEIPEL: I have nothing further.

17 THE COURT: Anything further?

18 MR. MIN: No.

19 THE COURT: Any objection to this witness being
20 excused?

21 MS. SEIPEL: He can be excused.

22 MR. MIN: No objection.

23 THE COURT: Thank you. You're excused.

24 We'll do a stretch break at this time. Counsel, call your
25 witness.

1 MS. SKINNER: Your Honor, the respondent rests,
2 except that we would ask the court to admit into evidence
3 passport pages, which we received from the petitioner. And I
4 conferred with petitioner's counsel. He has no objection.
5 We're compiling those for production as an exhibit to the
6 court as we speak.

7 THE COURT: They haven't been created at this point?

8 MS. SKINNER: They were provided last night, and my
9 assistant is working to compile what was received into a
10 format to provide to the court.

11 THE COURT: Any objection?

12 MR. MIN: We'll look at what they produced, but, no,
13 in general we have no objection to the passport pages. I
14 fully intend the passport page production will be what they
15 purport to be. But absent that one caveat, there's no
16 objection.

17 THE COURT: Wait until we see an actual presentation,
18 counsel.

19 MS. SKINNER: Thank you, Your Honor. With that, we
20 rest.

21 THE COURT: Counsel?

22 MR. MIN: Yes, Your Honor. We'd like to call
23 Dr. Peter Favaro as a rebuttal witness.

24 Your Honor, as Your Honor can recall, there was obviously
25 a lot of back-and-forth about Dr. Favaro's report and

1 testimony. We submitted, with the consent of respondent's
2 counsel, last night, a copy of a redacted report by
3 Dr. Favaro.

4 However, in light of Dr. Poppleton's testimony on the
5 issue of gatekeeping, we believe that Dr. Favaro's report
6 should be admitted into evidence unredacted because many, if
7 not all, of the portions of the report, and we can go back
8 through it, related to the issue of gatekeeping, which is
9 what Your Honor had suggested should be removed and what was
10 the subject of redactions between counsel.

11 However, because respondent's counsel on redirect
12 specifically asked about gatekeeping and because
13 Dr. Poppleton admitted that gatekeeping is relevant to the
14 consideration of undue influence in this case, which is a
15 critical factor for this court to decide upon, we believe
16 it's only appropriate that Dr. Favaro be permitted to offer
17 testimony on the issue of gatekeeping.

18 THE COURT: Any particularized response?

19 MS. SKINNER: Your Honor, we would just renew our
20 motion that Dr. Favaro's report indicates that his conclusion
21 is that he did not rely on Dr. Poppleton's report in
22 formulating his opinions. Again, that the report is not a
23 proper rebuttal report, and we'd ask the court to make a
24 ruling on the motion that we presented before. In the
25 alternative, we rely on the exclusions that we had already

1 conveyed to petitioner's counsel.

2 THE COURT: Before I read the report, let's hear the
3 witness's testimony, so I can have context regarding what
4 should be redacted or not, and there can be pinpoint accuracy
5 as to what portions of the report that you're referring to
6 that you believe the door has been opened on this particular
7 area of gatekeeping, counsel.

8 MR. MIN: Thank you.

9 PETER FAVARO,
10 having been sworn under oath, testified as follows:

11 THE CLERK: If you could please state your first and
12 last names and spell your last name for the record.

13 THE WITNESS: First name Peter, last name Favaro, "F"
14 as in Frank, A-V-A-R-O.

15 THE COURT: Just so we're clear, counsel, what I have
16 before me is Dr. Favaro's report. I only see two very
17 limited redactions. Are you representing to the court that
18 those limited redactions are pinpointed on the question of
19 gatekeeping?

20 MR. MIN: One second, Your Honor.

21 Your Honor, I want to make sure Your Honor is looking at
22 the copy that was sent to the court last night. I saw a nod
23 from your clerk, so I think we're on the same page.

24 Your Honor, if I could just have one moment. Your Honor,
25 I apologize, I have the redactions that are blocked in. We

1 also have a version that's just highlighted, and I want to
2 pull that up so I make sure I answer your question
3 accurately.

4 THE COURT: Counsel, perhaps if you continue your
5 examination of this witness and as it comes up regarding the
6 redacted portions, you can then alert the court to particular
7 places.

8 MR. MIN: Thank you.

9 Your Honor, for now we would offer, just before we start,
10 his CV and the redacted report into evidence, as
11 Dr. Poppleton's CV and report was admitted into evidence.

12 THE COURT: Those are exhibit numbers?

13 MR. MIN: The redacted report is not -- does not have
14 an exhibit number because that was just e-mailed to the
15 court, per the court's request. So we could describe it as
16 sub A to the existing report, or give it a new number.

17 THE COURT: The CV is listed at 108.

18 MR. MIN: Yeah. That included the unredacted report.
19 So we could list the redacted report as 108-A, or we can list
20 it as a fresh number.

21 THE CLERK: Let's do 108-A.

22 THE COURT: Let's do 108-A, counsel. And the CV of
23 Dr. Favaro is 108.

24 First, counsel for the respondent, is there any objection
25 to 108 being admitted?

1 MS. SKINNER: No objection to the witness's CV, Your
2 Honor. And we again renew our motion and supplemental motion
3 to strike the report as not a rebuttal report, indicating
4 that Dr. Favaro has four paragraphs of critique of
5 Dr. Poppleton's report on page 13 of his own. Other than
6 those paragraphs of critique, Dr. Favaro's report is an
7 initial report providing opinions on grave risk and
8 mature-child objections.

9 THE COURT: I'll reserve ruling pending the testimony
10 of the witness.

11 MR. MIN: Your Honor, I want to clarify. 108, the CV
12 pages are Bates-stamped pages 1658 through 1674. So I want
13 to be clear that those are the only pages that should be
14 admitted from 108. And 108-A would be the redacted report
15 that was e-mailed to the court and counsel last night.

16 THE COURT: I take it, counsel, that there is no
17 objection to 1658 to 1674?

18 MS. SKINNER: Yes.

19 THE COURT: To that extent, that exhibit is admitted.
20 The only issue now is 108-A. Please continue.

21 (Exhibit 108, pgs. 1658 - 1674 was admitted.)

22 DIRECT EXAMINATION

23 BY MR. MIN:

24 Q Dr. Favaro, can you describe your current occupation,
25 please?

1 A My current occupation is that I practice psychology in
2 court-related settings.

3 Q You're a licensed psychologist?

4 A Yes.

5 Q Where?

6 A State of New York.

7 Q How long have you been a practicing psychologist?

8 A I'm coming up on my 39th year.

9 Q Can you just give the court, since we have your CV, a
10 brief background of your education?

11 A I took my undergraduate degrees at Hofstra University.
12 Then I continued at Hofstra University to receive my master's
13 and two Ph.Ds.

14 Subsequent to that, I did a postdoctoral -- some
15 postdoctoral training at North Shore University Hospital in
16 the area of pediatric neuropsychology.

17 Q Do you belong to any professional organizations?

18 A I'm a member of the American Psychological Association.

19 Q What is that?

20 A It's the largest organization of psychologists devoted to
21 practice in many, many different areas. And it promotes the
22 science of psychology in a number of academic, social and
23 legal areas.

24 Q And have you ever written in the area of parental -- child
25 and parental forensic evaluations?

1 A That specific, no. I've done a lot of presentations on
2 child custody evaluations and forensics. I do mostly
3 speaking in that area, not so much writing.

4 Q Can you give a brief summary of the presentations you've
5 given in that area?

6 A I've given numerous presentations to the American Bar
7 Association, the local bar association, the matrimonial bar
8 association, and just -- I think it was in September, I gave
9 a presentation to the judges in Westchester in the First and
10 Second Department Appellate Division on best practices for
11 forensic evaluation.

12 Q When you say First and Second Department, since we're in
13 the great state of Washington, what does that mean, the First
14 and Second Department?

15 A The jurisdictions in the state of New York are separated
16 into different departments. And the Second Department is
17 where I practiced mostly. That would be Nassau and Suffolk
18 counties. And also then in Manhattan. And they're all
19 grouped by departments.

20 Q Do you have any training in forensic evaluations?

21 A Yes.

22 Q What sort of training?

23 A It was a large part of my training when I was in
24 professional school because of the emphasis that's placed on
25 evaluation, numerous continuing educations. I just finished

1 a 40-hour mandatory training, mandatory by the governor of
2 the state of New York, on forensic evaluation in child
3 custody cases involving domestic violence.

4 Q Tell me about that training program, the 40-hour training
5 program. What did that entail?

6 A It was a mandatory training. You couldn't be on the
7 approved list of forensic evaluators if you didn't take it.
8 It covered aspects of coercive control. It covered aspects
9 of violence. Many statistics on domestic violence. And they
10 were both individual presentations and group breakout
11 sessions to try to solve problems in cases involving domestic
12 violence.

13 And there was a large component of that training that
14 covered doing domestic violence informed custody evaluations.

15 Q And does your work entail a lot of cases dealing with
16 issues of domestic violence?

17 A Yes. Every custody case that I do has a component in it
18 that requires me to evaluate domestic violence.

19 Q You said earlier, when I asked you to describe your
20 occupation, that you are a psychologist in court settings,
21 right, something like that?

22 A Yes. I'm not a treating psychologist.

23 Q What do you mean when you say psychologist in court
24 settings?

25 A Well, I do many custody evaluations, which the setting

1 would a legal setting. The cases are neutral cases. Plus I
2 do a fair amount of peer review and rebuttal. And then also
3 with respect to the Hague Convention, over the last maybe
4 15 years, I've increased my practice in this area and have
5 done probably about 50 Hague evaluations; but about 30 cases
6 of testimony, 25, 30 cases of testimony all over the country.

7 Q In your role as a forensic evaluator in court settings,
8 what sort of data do you try to accumulate or receive?

9 A Some of it is self-report data that comes in the form of
10 face-to-face interviews, but also questionnaires that I have
11 developed over the last seven or eight years to collect
12 information efficiently and effectively.

13 Psychological testing. Child interviewing. Observations
14 of parents and children, review of collateral documents.

15 Q You talked about being on the First and Second Department
16 list of mental health providers in the state of New York.
17 What does that give you the opportunity to do, being on the
18 list?

19 A Well, you cannot do a court-ordered custody evaluation in
20 the state of New York unless you are an approved panel
21 member.

22 Q Have you been appointed by the courts of the state of New
23 York to undergo custody evaluations?

24 MS. SKINNER: Objection, relevance.

25 THE COURT: It's overruled.

1 A Thousands of times.

2 Q How many in the last year or so?

3 A Let's say 2024, I've probably done 70 or 80 evaluations.

4 Q And how many times have you been qualified to give expert
5 testimony in custody cases?

6 A Every time I was presented, and probably in the hundreds
7 of times.

8 Q And in Hague cases, you said you testified 20 or 25 times?

9 A About that, yeah.

10 Q And have you been qualified to give expert testimony in
11 Hague cases?

12 A I've been qualified on issues of domestic violence. I've
13 been qualified as an expert in grave risk, on Article 13(b)
14 of the Hague Convention. I've been qualified in the area of
15 general psychology.

16 Q What about in the area of the mature child exception?

17 A I haven't been presented as that. I mean, I've done
18 evaluations concerning it, but I was never offered as an
19 expert in that.

20 Q Did you recently testify in a case in the state of New
21 York -- withdrawn.

22 In what courts have you testified in Hague Convention
23 cases before?

24 A Eastern District of New York, Southern District of New
25 York. I've been qualified in the states of Virginia, Texas,

1 Los Angeles, Central Los Angeles, Central District. Those
2 are the ones I can remember, off the top of my head.

3 Q Outside the state of New York, you mentioned a couple.

4 A Yeah.

5 Q In those cases, did you undergo forensic evaluations?

6 A Did I undertake them?

7 Q Yes.

8 A Yes. Oh, wait, there was also a neutral forensic that I
9 did in the state of Connecticut.

10 Q And in many of the cases that you testified, was the issue
11 of grave risk of harm present?

12 A All of them.

13 Q Your testimony is that 25 or 30 cases, none of them dealt
14 with the child age of maturity objections?

15 A No. Some of them have involved that, but I was never
16 offered as an expert in that.

17 Q Did you provide opinions about a child's age and maturity
18 in those cases?

19 A Yes.

20 Q And about a child's objections?

21 A Yes.

22 MR. MIN: Your Honor, at this time we'd move to
23 qualify Dr. Favaro as an expert in the area of child
24 psychology, maturity, risk of harm and undue influence.

25 THE COURT: You may proceed.

1 MS. SKINNER: Your Honor, may I be heard?

2 THE COURT: You may.

3 MS. SKINNER: Thank you, Your Honor.

4 We would object to the qualification of this witness to
5 testify in this matter because he is presenting himself as a
6 psychologist without the licensure to do so. In the state of
7 Washington, under RCW 18.83.020, it's unlawful for any person
8 to represent himself or herself to be a psychologist without
9 first obtaining a license as provided in the chapter.

10 And then we go into RCW 18.83.010, and it describes the
11 practice of psychology to include the observation,
12 evaluation, interpretation of human behavior, which includes
13 but is not limited to psychological measurement, assessment,
14 evaluation by means of psychological, neuropsychological and
15 psychoeducational training, and includes guidance and
16 counseling of therapeutic techniques.

17 So we would ask this court to not qualify this witness, as
18 the licensure is directly related and relevant to qualifying
19 this witness as an expert. You can't have an expert without
20 a valid license.

21 THE COURT: Counsel.

22 MR. MIN: Your Honor, this seems to be something that
23 counsel may have brought up in a motion in limine where it
24 could properly be discussed and briefed. They brought two
25 motions in limine and never raised this issue once. And

1 unless they decided to save it for this moment, it seems as
2 though this is either some sort of attempt at, like, ambush
3 strategy.

4 But, Your Honor, at this point I certainly can't respond
5 to an issue that counsel just raised on the spot. I mean, I
6 think expert testimony does not require the practice of
7 psychology in the state. He's giving his opinion. He is a
8 licensed psychologist. Certainly, I'm assuming by counsel's
9 representation, maybe Dr. Poppleton, who is based in
10 Oregon --

11 THE COURT: Counsel, slow down, please.

12 MR. MIN: -- has some sort of licensure in the state
13 of Washington. But I can't certainly speak to that. But at
14 the end of the day, Dr. Favaro is a licensed psychologist in
15 the United States. He's not treating anyone in the state of
16 Washington. He's simply offering his opinion.

17 THE COURT: Does the statute suggest that he is
18 required to be a licensed physician in the state of
19 Washington?

20 MS. SKINNER: Yes, Your Honor, specifically pointing
21 to the statute 18.83.020 and 010, indicating that it's
22 unlawful for a person to represent himself to be a
23 psychologist without first obtaining a license. And then,
24 again, the definitions, when we go into the practice of
25 psychology, it's not limited to somebody who evaluates,

1 diagnoses and treats; it's much more broad to include a
2 description of a psychologist who is doing observation,
3 evaluation, interpretation, including psychological
4 measurements, assessments and so forth.

5 And we believe that now is the proper time to bring this
6 motion, as now is the time that petitioner is offering this
7 witness to be an expert.

8 THE COURT: Counsel, we're right at our morning
9 break. I'll give you the opportunity of the recess to engage
10 in any type of additional response that you'd like to provide
11 to the court.

12 MR. MIN: Briefly, can I just address the matter and
13 then we'll supplement with further response afterwards?

14 THE COURT: Yes.

15 MR. MIN: Your Honor, counsel has known for quite
16 some time that we're offering this witness as an expert. So
17 I think it's a little bit misleading to suggest to the court
18 that this was the opportune time to raise this issue because
19 this is when we're offering this witness as an expert.

20 I mean, I would start there. But otherwise, we can
21 address the issue when we return.

22 THE COURT: All right. We'll take our break. Please
23 rise.

24 (Recess.)

25 MR. MIN: Your Honor, I reiterate, this should have

1 been an issue raised on the motion in limine stage. In our
2 preliminary research on this issue, there's certainly some
3 cases that talk about how this should go to weight, not to
4 admissibility of an expert's testimony. We would want the
5 opportunity to brief this, before anything. I think we're
6 wasting sort of valuable trial testimony time. We do think
7 this is a weight issue, not an admissibility issue.

8 The statute specifically says a person cannot hold
9 themselves out to be a psychologist; it doesn't say you can't
10 render testimony in a court, which is the purpose of this
11 individual's testimony here. He's not practicing psychology;
12 he's not offering his services in the state of Washington.
13 So I don't think that that's a relevant criteria in this
14 case, Your Honor.

15 THE COURT: We'll move forward, counsel. This is
16 what I'm going to do. The respondent's case elected to wait
17 until now to raise this question, and I do agree with counsel
18 it would have been helpful for the court to have this
19 information and this challenge before we even started today's
20 proceedings, but in light of the fact that we are where we
21 are right now, I'm going to permit the witness to testify.
22 I'll give counsel the opportunity to brief the issue over the
23 evening hour.

24 If the court is not satisfied that counsel's arguments are
25 persuasive and if the witness should not be permitted to

1 testify, I'll strike the witness's testimony. But I don't
2 think it's appropriate right now to delay the proceedings to
3 wait until research is done.

4 So please return back to the witness stand.

5 MS. SKINNER: Your Honor, may I be heard on two
6 points? One point being that we had no knowledge or
7 information, until today, whether or not this witness would
8 have applied for any kind of professional licensing under the
9 state of Washington and which would have allowed him to be
10 qualified as an expert.

11 The second part being, the statute specifically provides a
12 carve-out for exceptions to the licensure requirement, two
13 exceptions, one for the teaching of psychology in an
14 educational institution; or two, for the conduct of research
15 for the problems of human or animal behavior.

16 So the statute does specifically carve out two exceptions.
17 Those exceptions do not include forensic evaluation. And I
18 understand that Your Honor's ruling is that petitioner would
19 brief that issue, and we'll resume tomorrow on the issue.
20 Thank you.

21 THE COURT: That still doesn't address the concern,
22 counsel, that if you were aware at any level that you were
23 going to challenge this witness's qualifications -- you
24 certainly had the witness's CV before you, you certainly knew
25 what the limitations of his CV were in terms of the state of

1 New York, or other states he's represented he's provided
2 testimony in. But we are where we are, as I've indicated,
3 counsel. And the appropriate remedy is to let the witness
4 testify and let the parties provide any additional briefing
5 you believe is appropriate or necessary.

6 MS. SKINNER: Thank you, Your Honor. And with that,
7 we do object, then also to the underlying certification,
8 pending Your Honor's ruling on the matter, as to the mature
9 child exception. It appears that this witness has provided
10 expert testimony in cases where he has not been offered as an
11 expert on the issue of mature child. So we don't believe
12 this witness has the qualifications, training and background
13 in order to be qualified specifically on the mature child
14 exception.

15 THE COURT: All right. Let's proceed.

16 MR. MIN: Your Honor, one clarification.
17 Respondent's counsel, in her statement, said, "We understand
18 that petitioner will brief this issue tonight." But my
19 understanding of what the court said is that all counsel
20 should be briefing this issue tonight.

21 THE COURT: That's correct. That's correct.

22 And, counsel, we're going to break at 10 minutes to 12
23 today. So if you're scheduling where you're going with your
24 examination, please understand that.

25 MR. MIN: Thank you, Your Honor.

1 THE COURT: Please proceed.

2 MR. MIN: Thank you, Your Honor.

3 Q Dr. Favaro, in your capacity as a forensic evaluator, does
4 your work or process in custody cases differ than your
5 process in Hague Convention cases?

6 A Yes.

7 Q How so?

8 A The Hague Convention cases are about jurisdiction, not
9 custody. And best interests are generally not a legal aspect
10 of Hague defenses.

11 Q Are there similarities in the process?

12 A Yes.

13 Q How so?

14 A They're both evaluated in approximately the same way. I
15 think that a difference is that in Hague cases, while I reach
16 out to the other side and ask for their participation in
17 custody cases that I do, they're usually -- the court usually
18 orders both parties to participate.

19 Q Did you attempt to obtain permission to evaluate and meet
20 with the mother in this case?

21 A Yes.

22 Q What was your understanding as to whether the mother would
23 make herself available to meet with you in an evaluation
24 capacity?

25 A The mother made herself available to bring the child for

1 me to interview the child, but she would not fill out
2 questionnaires or would not make herself available for an
3 evaluation.

4 Q Can you briefly describe what you were asked to do in this
5 case?

6 A I was asked to look at Dr. Poppleton's work product and
7 provide a critique and alternative hypotheses.

8 Q When you say "alternative hypotheses," what do you mean by
9 that?

10 A Well, I think that from a legal perspective it means
11 rebuttal. But from a peer-reviewed perspective, it means to
12 examine the underlying work product and provide alternative
13 hypotheses or critiques.

14 Q If you had -- after your meetings with the child and
15 receipt of information from various sources, if you had come
16 to the same -- I'm looking for a different word than
17 conclusion -- but had made the same observations as
18 Dr. Poppleton, would it be necessary for you to prepare a
19 report in this case?

20 A Well, in this case I did agree with some of his
21 hypotheses, but I didn't agree with others. So it would have
22 been necessary for me to write a report or provide testimony
23 relative to my comparison of my data versus his.

24 Q Okay. And would you say that your data was different than
25 Dr. Poppleton's?

1 A Yes.

2 Q Okay. Would you say that your evaluations of the child
3 differed than those reported by Dr. Poppleton?

4 A Yes.

5 Q How many times did you meet with the child?

6 A Three times.

7 Q How long?

8 A One hour each time.

9 Q Can you briefly describe your meetings with the child?

10 A When the child first came to see me on the first session,
11 he was a little bit shy in the beginning. He was -- he came
12 in, and he was being hugged by his mom. It was clear that
13 they have a close relationship. And then he came into the
14 room that I was in and that I had set up for us to have an
15 interview, and he immediately formed a good rapport with me.
16 This is a very socially enjoyed child, kind child,
17 well-mannered child. And I have to say that we really hit it
18 off well. He answered my questions.

19 I asked him if the next time he wanted to meet, he wanted
20 to play some video games. As it turns out, I asked his --
21 very interested in video games, and I spent a part of my
22 career being a video game designer for a couple of big
23 companies to pay my way through graduate school, so we
24 immediately had common ground -- and I asked him to ask his
25 mother if we could have some permission to play video games

1 while we chatted. She said "yes."

2 You want me to go session by session, right?

3 Q Are you on the first session right now?

4 A In the first session we had a chat about many things, and
5 then made plans to play some video games during the next
6 session. He was very excited about that.

7 Q Okay. Let me stop you before you go on to the second
8 session.

9 A Sure.

10 Q How long was that first session for?

11 A One hour.

12 Q And who was in the room when you were talking to AS?

13 A Just the child and I.

14 Q And do you recall the nature of the conversations you had
15 with the child during the session?

16 A Yes, it's in my report. We talked about what the child
17 had experienced at home, talked about whether the child had
18 any objection to moving back to Singapore. We talked about
19 how his parents bickered and how he tried to listen to them
20 bicker, but he couldn't exactly describe what he heard. The
21 child referred to violence --

22 MS. SKINNER: Objection, hearsay.

23 THE COURT: Sustained, counsel.

24 MR. MIN: Your Honor, this is during the coercive
25 evaluation. The child's statements are certainly a critical

1 part. There's a hearsay exception for this forensic process
2 and statements made by the child. I mean, certainly there
3 was ample testimony by Dr. Poppleton, invited by respondent's
4 counsel, about statements made by the child and the child's
5 objections in this case.

6 THE COURT: Counsel, anything further?

7 MS. SKINNER: Your Honor, nothing further other than
8 this is hearsay, and there's no exception to the hearsay.
9 And merely because it was not objected on prior testimony
10 doesn't mean that waives any further objections on this.

11 THE COURT: Counsel, that's a strategy question, if
12 you chose not to object. What particular exception are you
13 referring to that would apply to the specifics of this
14 child's statements to this doctor?

15 MR. MIN: Understood.

16 Q Can you describe your second session with the child?

17 A Second session with the child, the mother pulled me aside
18 prior to my going in to see the child and asked me if it
19 would be okay to record -- for the child to record my session
20 with him. And I said that it would be okay, but that I would
21 like to set it up so that the child wasn't uncomfortable with
22 any recording device in front of him.

23 Mother did not consent to that, walked directly into the
24 room, set up an iPad in front of her child. And the child
25 immediately began singing into her iPhone -- into her iPad,

1 rather.

2 We played. It was mostly a play session. I was
3 interested in knowing from the child why he thought his mom
4 had to record me. And I don't think I can continue my answer
5 without the hearsay objection, so I won't.

6 We continued to have great rapport with one another. He
7 was kind enough to bring me a juice box and some snacks. And
8 we continued to talk and play.

9 Q Can you describe your third session, please?

10 A Very similar to the second session. And then we exchanged
11 pleasantries, and that was it.

12 Q Did you observe any changes in AS's demeanor during your
13 sessions?

14 A Yes.

15 Q How so?

16 A He was much more open in the first session. But he
17 literally could not take his eyes off the iPad during the
18 subsequent sessions. And as a result, he was more subdued.

19 Q What limitations were present in your report?

20 A Well, I think that, you know, methodology is always very
21 important. Mother sort of stepping over my methodology to
22 include the kind of recording that she wanted to occur,
23 created a little bit of a breakdown in the rapport between
24 the child and I. Certainly a limitation that I didn't get to
25 speak to both parents. And that is usually something I'm

1 able to do. So I considered that a methodological limitation
2 as well.

3 Q In addition to interviewing and evaluating AS, did you
4 view any other materials as part of your evaluation?

5 A Yes. I reviewed school reports, and I reviewed some
6 questionnaires that the father had submitted for information.
7 I reviewed report cards that the child had been issued while
8 living in Singapore.

9 Q Did you talk to the child about whether he had any
10 objection to returning to Singapore?

11 A Yes.

12 Q Did the child express to you any objections to going back
13 to Singapore?

14 MS. SKINNER: Objection, hearsay.

15 THE COURT: Sustained.

16 MR. MIN: Your Honor, this goes to his state of mind
17 at that moment when reporting to Dr. Favaro, the child's
18 state of mind, which is, of course, a relevant consideration
19 in this case.

20 THE COURT: With that explanation, the court will
21 overrule. The witness is permitted to testify.

22 A May I have the question, again?

23 MS. SKINNER: Your Honor, may I have an opportunity
24 to respond? The state of mind applies to the listener, not
25 that of the speaker.

1 THE COURT: It's overruled, counsel.

2 MS. SKINNER: Thank you, Your Honor.

3 THE COURT: Repeat the question, counsel.

4 MR. MIN: Sorry.

5 Q I had asked you whether or not you had any discussions
6 about the child going back to Singapore. I think you said
7 "yes." Then I believe I asked you what did the child tell
8 you about returning to Singapore?

9 A It was part of a larger conversation. He did not object
10 to returning to Singapore. And in his words, he basically
11 said that as long as he wasn't near violence between the
12 mother and father. I then probed further. And the child
13 told me, "You mean to say that my mother would live in one
14 house and my father would live in another house, and I would
15 see them each at different times?" I replied, "Yes." And he
16 said, "Oh, that would be fine."

17 Q Did the child tell you anything that led you to believe
18 that he had an objection to returning to Singapore?

19 A No.

20 Q Did the child tell you anything that led you to believe
21 that the child had personally witnessed any violence between
22 the parties?

23 MS. SKINNER: Objection, hearsay.

24 THE COURT: Counsel, you're starting to go far afield
25 and beyond the scope of the limited latitude the court is

1 allowing. So let's ask another question.

2 MR. MIN: Your Honor, I would also make the 803(4)
3 exception argument, that this is in the coercive medical
4 diagnosis or treatment. And I think the exception applies
5 there, but I'll move on.

6 THE COURT: Please continue.

7 Q Did you form any opinions as part of your evaluation in
8 this case?

9 A Yes.

10 Q Did you form any opinions about grave risk of harm?

11 A Yes.

12 Q And I'll broaden that out to ask if you formed any
13 opinions about risk of harm to this child?

14 A Yes.

15 Q What were your opinions?

16 A With respect to grave risk, if there is a finding of
17 domestic violence and if the child was exposed to domestic
18 violence, then there would be a risk to the child. I don't
19 know if it would be a grave risk. But also, if you consider
20 mitigating factors such as the parents living in different
21 places, the parents not having contact with one another, the
22 father --

23 MS. SKINNER: Objection. Outside the scope of the
24 question.

25 THE COURT: It's overruled.

1 A -- the father having some supervised visitation perhaps,
2 or therapeutic visitation perhaps, as was discussed, that I
3 don't really believe that there would be a grave risk under
4 those circumstances.

5 Q Okay. So let me break that down. Assuming that there --
6 the court believes and finds that there is a history of
7 domestic violence and, coupled with that, that the child was
8 a witness or exposed to that domestic violence, then that
9 certainly could lead to the conclusion that there are risks
10 to this child. That would be fair, right?

11 A There are some risks, if those things are true.

12 Q And you also said that if there are risks, there could be
13 mitigating circumstances, or mitigating, I guess, factors
14 that could mitigate against that risk; is that fair?

15 A Yes.

16 Q And you've suggested or proposed a couple of things that I
17 guess you heard Dr. Poppleton talk about, supervised
18 therapeutic visitation being a couple of those, correct?

19 MS. SKINNER: Objection, leading.

20 THE COURT: That is leading, counsel.

21 MR. MIN: I wanted to make sure I understood, but
22 I'll move on, Your Honor.

23 Q What about supervised or therapeutic visitation would
24 mitigate against any risk that would be present to this child
25 in those circumstances?

1 A Supervised and therapeutic visitation offer the
2 supervisor, multiple opportunities to observe whether or not
3 the parent is doing anything inappropriate or anything that
4 would place the child in harm's way during those
5 circumstances.

6 So there would be ongoing monitoring of anything the
7 father might do that would bring any risk to the child
8 physically or psychologically.

9 Q What about orders of protection? Would that be something
10 that could mitigate against risk in the future?

11 A Well, I feel like that question poses to me something that
12 would require a legal opinion. I mean, obviously on the most
13 basic level an order of protection is meant to keep people
14 away from one another. And for that reason I would say it
15 mitigates risk.

16 Q Did you form any opinions about whether the child had been
17 influenced by the mother in this case?

18 A Yes.

19 Q What opinions did you form?

20 A Well, certainly the way the mother behaved with respect to
21 the recording was her influencing my process. And I do
22 believe that the best way to formulate an opinion about
23 something is to observe it directly, which I did. Based on
24 things the child told me that the mother said to him, I
25 believe that was also an important piece of data.

1 MS. SKINNER: Your Honor, I move to strike this
2 opinion testimony based off of evidence that's not
3 admissible.

4 THE COURT: What's your specific objection?

5 MS. SKINNER: That this witness has not laid a
6 foundation for providing his opinion when he's testifying
7 that his opinion is based off of evidence that is not
8 provided to this court.

9 THE COURT: What specifically you referring to
10 counsel?

11 MS. SKINNER: Oh, sorry, Your Honor.

12 He's indicated that he based his opinion partially on
13 things the child told him.

14 THE COURT: All right. The court hasn't allowed the
15 witness to testify to what the child told him; he's
16 identifying what the basis of that conclusion or opinion is.
17 So that objection is overruled.

18 MS. SKINNER: Thank you, Your Honor.

19 A May I continue?

20 THE COURT: Let's have another question, so you'll
21 know where to continue.

22 MR. MIN: Sure. Thank you.

23 THE COURT: I believe your question, counsel, was the
24 child influenced by the mother.

25 Q What sort of impact could exposing the child to ongoing

1 litigation have with respect to what a child may present as
2 his preference?

3 A Well, certainly my experience as a custody evaluator,
4 where in many of those cases the litigation goes on for
5 years, it has an adverse impact on the child.

6 Q What is the -- did you agree with Dr. Poppleton's
7 statement that one of the considerations or one of the
8 possible reasons a child may express a preference to be with
9 one parent over another might be that they are with the
10 parent that took them away from the other parent? Do you
11 follow that?

12 A Yes. I do agree with that statement. Children rely on
13 their parents for survival. And they are going to align
14 themselves with the parent who's helping them survive.

15 And the only exception to that would be the kind of
16 abduction of a child where the child is tortured, or hurt, or
17 threatened physically, which does not exist in this case.

18 Q Did you agree with Dr. Poppleton's testimony that
19 developmentally, children ages six to eight make more
20 meaningful connections outside of their immediate family than
21 when they were younger?

22 A I would say between the ages of six and eight, their
23 meaningful connections are in both places, social and
24 familial.

25 They don't really individuate until they become preteens,

1 and their friends are more important than anything else.

2 Q When formulating your opinion on the issues of risk to
3 this child, were any of the bases of your opinion statements
4 made by the child to you about his relationship to his
5 father?

6 A No.

7 Q With respect to your opinions regarding the potential for
8 undue influence by the mother to the child, were any of your
9 opinions based upon the statements made to you by the child?

10 A Yes.

11 Q I'm going to ask you what those statements are.

12 MR. MIN: And, Your Honor, I'm going to preface this
13 -- I'll address it if there is an objection.

14 Q What statements did the child make to you that led you to
15 conclude or opine that there was undue influence from the
16 mother to the child?

17 MS. SKINNER: Objection, hearsay.

18 MR. MIN: Your Honor, I'm going to cite to Rule 703
19 in terms of basis of expert testimony. An expert is allowed
20 to or can rely on data that they collected or information
21 they gathered to form their opinion if it's used -- if it's
22 data that they would routinely rely upon in their profession.
23 And the question is whether or not the information --
24 probative value outweighs the prejudicial effect. And this
25 is a bench trial.

1 THE COURT: Counsel, typically doesn't that come in
2 the format of the expert can rely upon data, but the
3 underlaying data doesn't necessarily be something that the
4 witness testifies about? He can render the opinion and
5 cross-reference and say: These are the things I considered.
6 But not to the extent you're representing to the court that
7 they can wholesale introduce all the information they
8 gathered and considered.

9 MR. MIN: Understood, Your Honor.

10 THE COURT: The objection is sustained on that
11 ground.

12 Q Let's go through, and we were talking about this before,
13 what was the basis of your opinion that the mother was
14 negatively influencing the child?

15 A I would say the most significant thing relates to the part
16 of the conversation I had with the child where he informed me
17 that his mother --

18 MS. SKINNER: Objection, hearsay.

19 THE COURT: Sustained.

20 Q Did you form any opinions about the child's level of
21 maturity and intelligence in this case?

22 A Yes.

23 Q What was your opinion?

24 A Very smart. Very, very smart child, who is articulate and
25 expressive, but who is not anything different than a typical

1 eight- to nine-year-old child. His preoccupation is with
2 video gaming. And he describes his life both in Singapore
3 and in the United States with not much richness.

4 MS. SKINNER: Objection, hearsay.

5 THE COURT: I'll allow limited latitude.

6 A He describes himself as bored everywhere. And I would say
7 that, significantly, his age was represented the most when I
8 asked him if he knew the difference between the truth and a
9 lie.

10 Q What do you mean?

11 A Well, you can judge a child's maturity by what point they
12 are in their moral development. And this child told me that
13 the difference --

14 MS. SKINNER: Objection, hearsay.

15 THE COURT: Sustained.

16 Q Were you able to evaluate his ability for abstract
17 reasoning?

18 A Yes.

19 Q What was your evaluation of that?

20 A Typical eight-year-old kid.

21 MR. MIN: Your Honor, just one moment.

22 No further questions, Your Honor.

23 THE COURT: Cross examination.

24

25

CROSS EXAMINATION

BY MS. SKINNER:

Q Dr. Favaro, you have not been presented as an expert in mature child abduction in eight cases before. Was that your testimony?

A Yes.

Q Yet you have offered an expert opinion in cases on a mature-child objection. Was that your testimony?

A Correct.

Q Without being qualified to do so?

A Yes.

Q You testified that best interests is not generally an aspect of Hague cases. Not generally, or not ever?

A I say not generally, because whenever we're dealing with the welfare of a child, no matter what kind of information we're dealing with, in part we're dealing with the child's best interests. It's unavoidable.

Q But that's not what the treaty calls for, correct?

A Correct. That's not what the treaty calls for. The treaty calls for the defenses that are being examined here at trial.

Q So it would not be appropriate, then, to consider things outside of what the treaty calls for?

A That's not what I said. To clarify, I said that it is almost impossible to tease out a child's best interests when

1 we're talking about things like grave risk. Of course it's
2 not in a child's best interests to go to a place where he
3 might be in harm's way physically or psychologically.

4 Q But we're not evaluating the child's best interests,
5 correct?

6 A From a legal standpoint? No, we are not.

7 Q You testified that mother would not make herself available
8 for an evaluation. But you weren't doing an evaluation on
9 mother, that's not what you were called to do, correct?

10 A She wouldn't make herself available as a collateral.

11 Q You testified that in the third session in meeting with
12 AS, he couldn't take his eyes off of the iPad. Do you
13 remember that testimony?

14 A Yes. In the second and third.

15 Q Okay. But didn't you, in fact, play video games nonstop
16 with AS on your Nintendo Switch that you brought?

17 A Yes.

18 Q So his eyes were glued to two devices at the same time; is
19 that your testimony?

20 A That is my testimony. He was distracted by the iPad both
21 times.

22 Q And he was distracted by the video games as well, correct?

23 A Yes.

24 Q You told the child that if returned to Singapore, he could
25 be in an environment where his parents would live in two

1 separate households?

2 A No. He asked me that.

3 Q And you confirmed and affirmed that to him, correct?

4 A Yes.

5 Q You testified that he did not voice an objection to being
6 returned to Singapore, but you only laid out the possibility
7 to him that he could be returned to two separate households,
8 correct?

9 A Correct.

10 Q Would you --

11 A Just to finish, counsel.

12 Q Excuse me, there's no question pending.

13 A But I didn't finish my answer.

14 Q There's no question pending, Dr. Favaro.

15 Wouldn't you agree that mitigative actions become
16 difficult when an abusing parent has essentially limitless
17 monetary resources?

18 A I don't think I can answer that question.

19 Q You testified that a way to justify a child being taken is
20 only when they've been threatened, tortured or physically
21 hurt by the parent left behind. But that's not the grave
22 risk of exposure to harm standard, correct?

23 MR. MIN: Objection, calls for a legal conclusion.

24 THE COURT: Sustained.

25 Q So is it your testimony -- is that a correct recitation of

1 your testimony?

2 A I don't think so, counsel.

3 MR. MIN: Objection as to form.

4 THE COURT: That's overruled on those grounds.

5 Q You testified that a way to a child being taken is when
6 they are -- you used the words "threatened, tortured or
7 physically hurt," did you not?

8 A I used that in the context of the question that asked me
9 about a child's allegiances to a parent.

10 Q You are not licensed to practice or be -- or represent
11 yourself as a psychologist in the state of Washington,
12 correct?

13 A Correct. I did apply for -- I did contact the Department
14 of Health on ten different occasions and could not get a
15 response from them.

16 Q And you are representing yourself today to be a
17 psychologist without having a Washington-issued license,
18 correct?

19 A No. I'm representing myself to be a psychology expert,
20 not a psychologist.

21 Q Can one become a psychology expert without having a
22 license to practice psychology?

23 A It's been the case for every other out-of-state Hague case
24 that I've ever done. I call the licensing board, I inquire,
25 and I've not had to have temporary licensure in any of those

1 occasions.

2 Q And you've never testified in the state of Washington on a
3 Hague case, correct?

4 A Correct.

5 Q Now, in this evaluation that you completed, did you make
6 observations?

7 A Of course.

8 Q And evaluations?

9 A Yes.

10 Q And interpretations?

11 A I don't think I made any interpretations.

12 Q You rendered psychological measurements?

13 A I've rendered -- no, I didn't do any psychological
14 measurement of the child.

15 Q Assessment?

16 A I did not assess the child.

17 Q Evaluation?

18 A I think I evaluated the child, yeah, sure.

19 Q Through psychological testing?

20 A I did not do psychological testing.

21 Q You did not do psychological testing. So tell me about
22 the checklist that you had father fill out.

23 A The father filled out a checklist in Singapore, okay, for
24 collateral information. If the mother had participated in
25 the evaluation, I would have given her that, too.

1 Q I was asking about the checklist that you had father fill
2 out and you designate an importance that it was filled out in
3 Singapore. That was actually filled out by a scribe of yours
4 as it was read to him, correct?

5 A A scribe of mine? No.

6 Q Is it your testimony that he filled that out himself,
7 directly?

8 A I probably should have, but I did not ask him if he filled
9 it out directly.

10 Q Were you here present during his testimony earlier in this
11 trial?

12 A Yes.

13 Q Did you observe his testimony where he indicated that he
14 did not fill it out directly but a scribe from your office
15 filled it out for him?

16 A I didn't catch that. A scribe from whose office? My
17 office?

18 Q Yes.

19 A No. I don't have a scribe in my office.

20 MR. MIN: Objection. That was mischaracterizing the
21 testimony.

22 THE COURT: That's sustained, counsel. Rephrase the
23 question.

24 Q You provided the questionnaire or checklist to the
25 petitioner but did not ask further as to how he completed

1 that?

2 A Correct. I should have, but I didn't.

3 Q You did no intimate partner violence risk assessment on
4 the father in this case, correct?

5 A I couldn't. To do that, you have to be able to interview
6 both parties.

7 Q So my question was yes or no. You did no intimate partner
8 violent risk assessment on father in this case, correct?

9 A That is correct.

10 Q You considered a restraining order that was issued against
11 the father by a Washington court in your evaluation, correct?

12 A Yes.

13 Q And in that restraining order, the courts of Washington
14 issued that order to mother, upon making findings of fact of
15 actions that took place, correct?

16 A Correct.

17 Q And that's a finding of fact in which you must consider in
18 your evaluation, correct?

19 A And I did, correct.

20 Q So you did not state in your report that, "I have not been
21 provided with any findings of fact"?

22 A Is that in my report?

23 Q And you did not state, "I do note there is a protective
24 order in place against father, which was not the result of a
25 finding of fact"?

1 A Yes, I think that was a TOP, prior to the finding.

2 Q So you believed that the courts of Washington have the
3 authority to issue restraining orders without making any
4 findings of fact of abuse?

5 MR. MIN: Objection as to form, legal conclusion.

6 THE COURT: Sustained.

7 Q You indicated, again, that mother would not consent to
8 being evaluated, correct?

9 A Correct.

10 Q And then at the same time, you also indicated that
11 evaluating father is outside the scope of your role, correct?

12 A Correct. That's --

13 Q You wanted to evaluate mother but not father, correct?

14 A I wanted -- as I testified previously, I wanted to have
15 the mother as a collateral contact in this case. And my
16 report clearly indicates that father was used only as a
17 collateral contact in this case.

18 Q You indicated that you found no indication of hatred or
19 disdain for the child's mother made by father, correct?

20 A Yes.

21 Q But in the intake paperwork that father provided to you,
22 he described a slew of complaints against mother, correct?

23 A Yes.

24 Q You indicated that you believed mother to be having some
25 type of inappropriate influence over the child. Yet despite

1 that influence, you testified you were able to have a
2 fantastic rapport with the child, correct?

3 A Correct.

4 Q Whatever influence may or may not have been made on the
5 child, you were still able to break through that, correct?

6 A Yes.

7 Q And despite whatever he may have heard or influenced --
8 sorry, I'll strike that.

9 You believe the child is a concrete thinker; is that
10 correct?

11 A Yes. Appropriate for age.

12 Q And an operational thinker?

13 A No. I might have said "concrete operational." That is a
14 designation that was given by the theorist who posited
15 theories about a child's development. It's called the
16 "concrete operational stage of development."

17 Q You were able to review Dr. Poppleton's report in which he
18 relayed instances of abuse, domestic violence, intimate
19 partner violence that mother reported by father, correct?

20 A Sorry. Couldn't hear over the coughing.

21 Q You were able to review Dr. Poppleton's letter in which he
22 relayed information from mother where she describes abuse by
23 father, correct?

24 A Correct.

25 Q Now, if the allegations made by mother are true, then she

1 would be a victim of domestic violence, correct?

2 A Yes. It says so right in the report.

3 Q And you agree with that?

4 A I believe I said all three experts agreed on that, yes.

5 Q So if the allegations of mother are supported and found to
6 be credible, then the child would be at grave risk for
7 serious psychological harm, correct?

8 A I testified to that on direct.

9 Q And that's because the connection in the literature
10 between children who are reared in the presence of intimate
11 partner violence and being in that environment can lead to
12 altered brain development, correct?

13 A That only has to do with infants.

14 Q Impaired cognitive development?

15 A Impaired brain morphology development. You said two
16 different things in the same sentence.

17 Impaired brain development is something that occurs when
18 an infant grows up in the same environment as the coercive
19 the control dynamic exists.

20 Q If the child is being subjected to those abuses and
21 violence in the home from the time of infancy, is that what
22 you're saying?

23 A No. What I'm saying -- and I'm sorry if it's not clear --
24 is that the research literature that you're describing says
25 that when an infant grows up in a home where there's domestic

1 violence, intimate partner violence, it can have an impact on
2 the developing brain.

3 Q Okay. And that can impair cognitive development?

4 A Yes.

5 Q And social -- and lead to social and emotional
6 dysfunctionality?

7 A Yes.

8 Q And within the intimate partner violence and coercive
9 control, there could include use of harassment of the victim,
10 correct?

11 A That's the definition.

12 Q Manipulation?

13 A Also part of the definition.

14 Q Humiliation?

15 A Part of the definition.

16 Q And that's all as a means of controlling the power dynamic
17 in the relationship, correct?

18 A That is correct.

19 Q And in those cases the victim of that kind of intimate
20 partner violence shows fear; is that right?

21 A Yes.

22 Q And intimidation?

23 A Yes.

24 Q They can show confusion about whether or not to stay or
25 leave the relationship, with the hope that the relationship

1 might improve?

2 A Correct.

3 Q And there would be an element of entrapment?

4 A Yes.

5 Q And manipulating the power dynamics in that relationship,
6 so that the victim feels that they cannot escape, right?

7 A That is what intimate violence means.

8 Q And that can include also shouting or pushing?

9 A Yes, it can.

10 Q And making the victim feel as if she's a second class
11 citizen in the relationship?

12 A Yes.

13 Q And you reviewed Dr. Poppleton's letter in which physical
14 violence was described of father hitting the child, correct?

15 A Yes.

16 Q And pinching the child?

17 A Yes.

18 Q In your Child Behavior Checklist that you had in this
19 case, that was not scored, correct?

20 A No.

21 Q Why didn't do you that?

22 A I didn't use it for that purpose. I used it to gather
23 information.

24 Q So wouldn't it have been helpful to determine whether the
25 child is, in fact, suffering from any mental health concerns?

1 A Not using that in this setting. The use of that checklist
2 in this setting has been very harshly criticized because it's
3 based on the self-report. And parents will sometimes, I
4 guess, not create the most honest self-report because they're
5 looking to achieve a goal.

6 But I use it just to get a parent's description of how
7 they see their child.

8 Q And a child's decompensated mental health could be a
9 result of violence in the home, correct?

10 A Once again, please?

11 Q A child's decompensated mental health could be a result of
12 violence in the home.

13 A It could be. It's possible.

14 Q Wouldn't you agree that holding contradictory feelings is
15 a developmental step to maturity?

16 A I'm sorry, counsel, I don't understand the question. Can
17 you say it again?

18 Q Holding contradictory feelings is a developmental step to
19 maturity. Do you agree with that statement?

20 A I don't know what it means.

21 Q To feel two things at the same time that contradict one
22 another.

23 A And what could that be related to?

24 Q It is a developmental step towards maturity.

25 A There's not enough information in that question for me to

1 answer. At what age?

2 Q At any age. Is that a step towards maturity?

3 A Any type of thinking could be a step to maturity. I don't
4 know whether or not it would be fair to say that holding
5 contradictory feelings, without any other context, would be
6 related to that. I think that children as young as three
7 years old can have contradictory feelings.

8 Q And acknowledge those?

9 A Yes.

10 Q You told the child on your first meeting that his father
11 loves him very much, correct?

12 A Yes.

13 Q Where did you base that statement from?

14 A Speaking to the father.

15 Q And you were aware that there is a protective order issued
16 by the state of Washington prohibiting direct or third-party
17 contact between the father and the child?

18 A Yep. Most orders of protection do that.

19 Q And despite that, you passed along a message to the child
20 from the father?

21 A The father didn't give me that message.

22 Q You just testified that the father did.

23 A No, the father --

24 MR. MIN: Objection. Mischaracterization.

25 THE COURT: Let the witness answer the question.

1 A The father never told me I want you to tell my son that I
2 love him very much.

3 Q And you told the child, on the first meeting, that the
4 father misses him?

5 A Um, I don't believe so.

6 Q So your statement that the father loves the child very
7 much, that is an influence on the child as to how the child
8 might then react to your questions and interactions with him;
9 is it not?

10 A It could be.

11 Q And if that statement that you made to the child was one
12 of the bases for mother's request to have an audio recording
13 of such blatant influence, that would be reasonable, would it
14 not?

15 A No, I don't think so, counsel.

16 THE COURT: Counsel, we're at ten minutes to twelve.
17 We need to stop at this point and resume at 1:30 this
18 afternoon. You may step down, sir.

19 (Recess.)

20

21

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25

1 AFTERNOON SESSION

2 THE COURT: Please retake the witness stand, sir.

3 Counsel, you may resume your examination.

4 MS. SKINNER: Thank you, Your Honor.

5 And, Your Honor, I have questions for this witness that
6 may be based on his report or qualifications as an expert.
7 And for the logistics of today's trial day, should I continue
8 to ask those questions pending Your Honor's decision?

9 THE COURT: Yes.

10 MS. SKINNER: Thank, Your Honor.

11 Q Dr. Favaro, when were you retained in this case?

12 A I don't know the exact date off the top of my head. But I
13 believe it was sometime late November, early December.

14 Q And who reached out to you?

15 A Mr. Min.

16 Q What were you hired to do?

17 A I was hired to review the work product of Dr. Poppleton
18 and provide critique and also alternative opinions to the
19 opinions that he had. But he didn't really have any
20 opinions, so I offered opinions where he had not.

21 Q And so did you critique Dr. Poppleton's methodologies?

22 A Um, I think I critiqued parts of his methodology. It
23 would be in the report.

24 Q Why would you critique parts but not all?

25 A Because some parts were appropriate.

1 Q So the parts that you felt needed critique, were
2 critiqued?

3 A Yes.

4 Q And the parts that were appropriate, were not critiqued?

5 A Yes.

6 Q And did you consider, in your rebuttal analysis, the
7 pieces of information that Dr. Poppleton either considered or
8 did not consider?

9 A It's definitely something that I looked at.

10 Q And did you consider his use or not use of psychological
11 testing?

12 A Yes, I definitely considered that.

13 Q And did you consider the standard of care that was used?

14 A Yes.

15 Q And whether or not he relied on multiple sources?

16 A He did rely on multiple sources.

17 Q Do you agree with Dr. Day's indication that when
18 addressing the age and maturity of a child's development and
19 the capacity to understand, the nature of the situation must
20 be assessed?

21 A I definitely agree with that statement. I don't recall if
22 I saw Dr. Day say that.

23 Q And do you believe that standardized testing can evaluate
24 the cognitive and developmental stages of a child?

25 THE COURT REPORTER: Excuse me, can you repeat that?

1 Q Do you agree that standardized testing can evaluate the
2 cognitive and developmental stages of a child relevant to
3 their maturity?

4 A No.

5 Q Did you rely on Dr. Day's report in coming up with your
6 report?

7 A In part.

8 Q Because you disagreed with some parts of her report?

9 A If the statement that you just made comes from her report,
10 I do not agree with that.

11 Q Dr. Favaro, you did not evaluate domestic violence in this
12 matter because you indicated you did not have access to the
13 mother, correct?

14 A That's not the only reason.

15 Q That was one of the reasons?

16 A One of the reasons.

17 Q Yet you still provided an opinion on the matter of
18 domestic violence in this case, correct?

19 A No. I provided information about it by saying that
20 domestic violence is something that can only be determined by
21 the trier of fact. And if it was determined, that might have
22 an impact on the Hague Convention. Domestic violence is not
23 a psychological opinion; it's a finding of fact.

24 Q You did not rely on that finding in the Washington
25 protective order, correct?

1 A I never said I didn't rely on it. I just -- it's just not
2 something that would generate an opinion on domestic
3 violence. A finding of fact is always something that should
4 be taken into consideration.

5 Q Okay.

6 Can you tell me what consent means as it relates to
7 sexual contact?

8 A It's quite literal. It means that when two partners are
9 about to engage in sexual contact, both partners must consent
10 to it.

11 Q Is an element of consent that it is uncoerced?

12 A I'm not sure I understand your question.

13 Q Can you have consent that has been coerced? Or is that no
14 longer consent?

15 A It really depends on what you mean by "coerced." I think
16 that in lots of relationships between men and women, people
17 have different drives, they have different desires, and they
18 could -- I would say that consent or coercion goes on
19 continually.

20 Q Is consent something that's given one time and it's good
21 for all times?

22 A Of course not.

23 Q So does consent need to be given each time there's sexual
24 contact?

25 MR. MIN: Objection. This seems to call for a legal

1 conclusion. I'm not sure how it's relevant to the testimony.

2 THE COURT: I'll sustain the objection on relevance
3 at this point in time, counsel.

4 MS. SKINNER: Your Honor, I'm laying the foundation
5 for the fact that this witness reviewed information in
6 Dr. Poppleton's letter regarding sexual abuse, sexual
7 assault, and what this witness then determined or made
8 findings about in concluding his opinions.

9 THE COURT: Well, then cross-reference the
10 examination in the context of the report because this witness
11 has been called as a rebuttal witness only. So please
12 proceed in that fashion.

13 MS. SKINNER: Thank you, Your Honor.

14 THE COURT: Objection is overruled.

15 Q Dr. Favaro, did you review the portions of Dr. Poppleton's
16 report that noted descriptions from mother about sexual
17 assault?

18 A Yes.

19 Q And pressure being put on mother to have sex when she did
20 not consent to it?

21 A Yes.

22 Q And pressure and demand or badgering for sex?

23 A I would go pressure or demands, but not badgering.

24 Q And did you review the letter to describe disrespect of
25 sexual boundaries of mother?

1 A Yes, that's her assertion.

2 Q Such as pressuring for unwanted anal sex when she did not
3 want it?

4 A If that were true.

5 Q But you reviewed Dr. Poppleton's letter that contained
6 such statements from mother, correct?

7 A Correct. But Dr. Poppleton's letter does not say whether
8 or not any of that is true. That is something for the finder
9 of fact.

10 Q Okay. That wasn't my question.

11 Did you also review the letter to include reports of
12 retribution against mother setting a sexual boundary?

13 A Yes.

14 Q And how about father's demand? Did you review the letter
15 to include mother's indications that father made demands and
16 kept a record of sexual contact?

17 A I don't recall that.

18 Q Would harming or threatening to harm a child be --
19 considering that it was a pattern that existed in order to
20 obtain favors or submission be a concern?

21 MR. MIN: Objection as to form.

22 THE COURT: Sustained.

23 Q If the -- if a parent had threatened to harm a child lest
24 the other parent conceded to their sexual demands, is that a
25 concern?

1 A If true, yes.

2 Q What about if a partner refused to use a condom when asked
3 to? Would that be a concern?

4 MR. MIN: Objection. Concern about what?

5 THE COURT: Be more specific, counsel.

6 Q In the analysis of whether or not intimate-partner
7 violence exists, would a fact that refusing to use a condom
8 when asked to be considered?

9 A In every case?

10 Q In every case, yes?

11 A I'm asking you, are you asking me this about every case of
12 alleged intimate-partner violence?

13 Q In some cases.

14 A I can't answer that because I don't know what the "some"
15 refers to.

16 Q And how about intimate-partner violence as it relates to
17 financial control? Did you review Dr. Poppleton's letter to
18 include statements from mother about concerns for financial
19 control from father?

20 A Yes. If that's -- that's what mother told Dr. Poppleton.

21 Q And would it be part of an intimate-partner violence
22 analysis to review allegations that father was in control
23 over a large amount of finances during the relationship?

24 A No. Just because he had control over the money, that's
25 not something that would elicit, in my opinion,

1 intimate-partner violence. Just somebody has more money than
2 the other. No.

3 Q What about giving an allowance?

4 A I don't think that would be dispositive of an
5 intimate-partner violent dynamic.

6 Q And what about leaving a victim in an uncertain position
7 as to whether or not she would have any finances available if
8 the abuser was threatening to leave? Would that be part of
9 the analysis?

10 A I'm sorry, the background noise prevented me from hearing
11 your question.

12 Q Would it be part of the analysis, in the intimate-partner
13 violence, that the abuser would leave the victim in an
14 uncertain position as far as financially if he were to leave
15 her?

16 A I don't know what you mean by "uncertain position." If
17 you could clarify, I'll answer.

18 Q Meaning left without a way to pay for basic necessities.

19 A Well, that's much more concrete, yes.

20 Q What about when a partner is talking about the finances in
21 terms of "My money" and not "Our money. Is that something
22 that would be seen in such a dynamic?

23 A Not necessarily at all.

24 Q And what about withholding information about finances?
25 Could that be part of the dynamic?

1 A Depends on what information was withheld.

2 Q You've heard the testimony given by mother in this case,
3 correct? You've been sitting in the courtroom?

4 A Yes.

5 Q And you've heard her reports that father had struck her?

6 A Yes.

7 Q And that he kicked her in the back when he was angry she
8 didn't have sex with him?

9 A That's not what I heard.

10 Q And that she went to get an X-ray due to that injury?

11 A I don't recall.

12 MR. MIN: Objection. The witness just testified
13 that's not what he heard. And the follow-up question assumed
14 the fact that this witness is not either privy to or aware
15 of.

16 THE COURT: That's sustained, counsel. Rephrase the
17 question.

18 Q Did you hear mother's testimony that she went to get an
19 X-ray from an injury she sustained by father?

20 A I don't recall that testimony, specifically. I recall
21 that he kicked her while he was sleeping.

22 Q And you don't recall testimony that she went to get
23 follow-up treatment for that?

24 A Not as I sit here right now. I'm not recalling that.

25 Q And so wouldn't you agree, then, that if mother's

1 statements were true, that that would be a consideration for
2 the court in determining whether or not a grave risk of
3 exposure to harm exists for this child?

4 MR. MIN: Objection as to form.

5 THE COURT: Sustained.

6 Q Dr. Favaro, you noted in your report that the elements of
7 grave risk, such as domestic violence and coercive control,
8 are subject to the court's ruling, correct?

9 A Yes.

10 Q The court's ruling of what?

11 A The court's ruling about credibility as to whether or not
12 those incidences actually occurred.

13 Q And it's not your job to make that determination, correct?

14 A Correct.

15 Q Dr. Favaro, it's true that a child who witnesses coercive
16 control or who lives in a coercively controlling environment
17 receives the same type of emotional trauma as a child who is
18 directly abused, correct?

19 A Yes.

20 Q Dr. Favaro, you've described yourself as a very well-known
21 video game designer and programmer, correct?

22 A Yes.

23 Q Well-known to whom?

24 A Well-known to the population of people that buy video
25 games.

1 Q That immature population that you talked about?

2 MR. MIN: Objection.

3 THE COURT: Sustained.

4 Q You wrote a choose-your-own-adventure-styled video game
5 called Alter Ego, didn't you?

6 A That was, I don't know, I think in the '80s, yeah.

7 Q Is that a "yes"?

8 A I said "yes."

9 Q I didn't ask you when.

10 A I was just thinking out loud, counsel.

11 Q Okay. When the player's character was put in certain
12 scenarios, they could choose from a set of options in that
13 game, correct?

14 A Correct.

15 Q The player could take certain actions when prompted?

16 A Correct.

17 Q And you wrote all of those scripts, correct?

18 A Yes.

19 Q The scenes that were created?

20 A Yes.

21 Q And the scenarios that were set up?

22 A Yes.

23 Q And that included a scene where the player is a child and
24 is kidnapped?

25 A Yes.

1 Q And tortured?

2 A I don't recall the torturing part. But, yes.

3 Q Killed?

4 A I don't recall that either. But might have been.

5 Q And buried?

6 A Yeah.

7 Q And you wrote a scene where the player can join friends in
8 sex with a willing but obviously mentally disturbed woman,
9 right?

10 A Yes.

11 Q And the player could choose whether or not to participate
12 in such a gang rape?

13 A Yes. Those were all from real-life stories. Correct.

14 Q And you created the first video game to ever come with a
15 maturity warning on it because of sex and violence?

16 A Correct.

17 Q And the producer asked you to cut some of that content,
18 right?

19 A No. The producer asked me to cut content that had to do
20 with gay lifestyle.

21 Q And you wouldn't?

22 A I didn't.

23 Q You stood your ground on all their nervousness of what the
24 game contained, correct?

25 A Um, I don't know that that was the case. What was the

1 case was that they objected to certain content. The content
2 was all derived from one thousand interviews about people's
3 true-life stories. And subsequently, we settled on what was
4 in the game based on people's true-life experiences.

5 Q And it was a fantasy that a player could fantasize about?

6 A I'm not quite sure what you mean by that. It was --

7 Q The game placed the player in a fantasy world, correct?

8 A The game setting was a fantasy world. But the content was
9 from real-world life experiences.

10 Q The player playing the game was not doing real-life
11 action; they were in a fantasy world, correct?

12 MR. MIN: Objection, relevance.

13 THE COURT: Counsel, it's starting to go far afield;
14 could you narrow it or move on.

15 MS. SKINNER: I'll move on, Your Honor.

16 THE COURT: Thank you.

17 Q Dr. Favaro, what alternative hypotheses did you come up
18 with in your report?

19 A Well, certainly my opinion that domestic violence had to
20 be evaluated by the trier of fact suggests that there's two
21 hypotheses right there. One hypothesis is that domestic
22 violence is credibly stated; the other is that it's not.

23 Q So it's either domestic violence or it's not, right?

24 A Yes.

25 Q And that needs to be evaluated by the trier of fact?

1 A Yes.

2 Q How is that not exactly what Dr. Poppleton wrote in his
3 letter?

4 A That is what Dr. Poppleton wrote in his letter. I don't
5 agree with him -- I don't disagree with him in its entirety.
6 And there's also a paragraph in my report that all three
7 experts concur that domestic violence should be taken into
8 consideration when adjudicating grave risk.

9 Q Did you read Dr. Day's report where she sets forth what
10 she describes as alternative hypotheses?

11 A Yes.

12 Q Do you agree that an alternative hypothesis is that the
13 child has an attachment to both parents?

14 A I don't think it was ever stated that he didn't. So there
15 can't be an alternative hypothesis. It's just a fact.

16 Q How does that rule out, or not, grave risk?

17 A Well, it doesn't. It doesn't address grave risk. The
18 fact that he loves both of his parents, that doesn't address
19 grave risk.

20 Q And how about Dr. Day's indication, that alternative
21 hypothesis, that with mother having exclusive access and
22 influence, there is an attempt to align or alienate the child
23 from the father? That's not an alternative hypothesis, is
24 it?

25 A Yeah. But it exists in the context of more than one

1 hypothesis. Either mother -- either the mother placed the
2 child under undue influence, or she didn't. And there was
3 data that I presented about whether or not she did. And the
4 alternative is that the judge may feel that that doesn't
5 constitute undue influence. So whenever you present one
6 hypothesis, the other hypothesis is also relevant and
7 possible.

8 Q But hypotheses are supposed to rule out an issue. That
9 doesn't rule out grave risk, right?

10 A You're going to have to give me more context than that.
11 What doesn't rule out grave risk?

12 Q Mother having exclusive access and influence with an
13 attempt to align or alienate the child from their father.
14 That's not an alternative hypothesis that rules out whether
15 or not a grave risk exists?

16 MR. MIN: Objection to the form and mischaracterizing
17 evidence. The issue of influence goes to maturity, not grave
18 risk.

19 THE COURT: Sustained.

20 Q The mother is a restrictive gatekeeping parent is not an
21 alternative hypothesis, correct?

22 A Yes. Of course it is. The alternative is, she's not.

23 Q But the hypothesis is, is there a grave risk or not; isn't
24 that right?

25 A That is the --

1 MR. MIN: Objection as to form.

2 THE COURT: Overruled.

3 A That is a potential factor that should be taken into
4 consideration when evaluating grave risk.

5 Q Okay. So the restrictive gatekeeping parent is not an
6 alternative hypothesis; you're saying it's a factor, it's a
7 consideration; is that right?

8 A The alternative hypothesis to anything that is is that it
9 isn't.

10 Q So the alternative hypothesis that needs to be determined
11 in this case is whether there is a grave risk of harm of
12 exposure to the child, correct?

13 A No, not correct. The hypothesis of whether or not the
14 mother is a gatekeeper doesn't go to grave risk, it goes to
15 undue influence.

16 Q Which is a consideration in the grave-risk analysis,
17 correct?

18 A That's acceptable.

19 Q Dr. Day indicates that, again, a hypothesis is the child
20 did not report any physical or psychological risk while in
21 the presence of either parent. That's not a hypothesis,
22 correct?

23 A It is a hypothesis if the child did report it to someone
24 that Dr. Day wasn't aware of.

25 Q It's not the hypothesis to the ultimate question of grave

1 risk, correct?

2 A Oh, it's definitely a factor in grave risk.

3 Q It's an observation or factor, correct?

4 A No. If the child did not see his parents in an abusive
5 relationship with one another, then that augers against grave
6 risk because if there is such contact and it is seen by the
7 child, that goes to the hypothesis that there is grave risk.

8 Q So it would impact the ultimate question; is that your
9 testimony?

10 A What ultimate question?

11 Q Of the existence of grave risk or not.

12 A So that -- I can break it down. Domestic violence
13 constitutes a grave risk, okay? The circumstances around
14 domestic violence helps inform us about what the child saw
15 because what the child sees will affect them, okay?

16 In this line of questioning, the child didn't see
17 anything. That doesn't preclude Your Honor from finding that
18 there was domestic violence, which bolsters the hypothesis of
19 grave risk.

20 Q Did you consider an alternative hypothesis that there was
21 justified restrictive gatekeeping occurring?

22 A Yes. I definitely considered that. Because, as
23 Dr. Poppleton testified, some parents will restrict access to
24 another parent if they believe that that restriction serves a
25 protective functioning.

1 Q And one of the justifications is a corroborated history of
2 intimate-partner violence, correct?

3 A No, I don't know where that question came from. I don't
4 understand it. First we're talking about what the child
5 sees. Now we're talking about a much more general concept.

6 Q What are some of the factors that would go into having
7 justified restrictive gatekeeping?

8 A It's way too broad to answer because the kind of
9 restrictive gatekeeping that I became aware of in this case
10 is that mother doesn't want the child to have any contact
11 with the father. So I don't think anything justifies that.

12 Q Didn't you rely on the Austin Fieldstone and Pruett *Bench*
13 *Book For Assessing Parental Gatekeeping* in parenting
14 disputes?

15 A I know that bench book.

16 Q Didn't you rely on it or include it as a reference in your
17 report?

18 A Yes.

19 Q Okay. And so aren't you familiar with Table 2 within the
20 report -- within that study that describes some reasons for
21 justified restrictive gatekeeping?

22 A That's not what I was talking about, counsel. I was
23 talking about the level of restriction, which in this case I
24 became aware that the mother wanted to restrict all contact
25 with the father.

1 Q Okay. I'm talking more in general what -- some of the
2 justifiable reasons for restrictive gatekeeping could include
3 a corroborated history of intimate-partner violence?

4 A But it still goes far afield from the question of how
5 restrictive is the gatekeeping? Okay? A parent -- and you
6 know I certainly don't condone any kind of violence -- a
7 parent who completely refuses to allow a child access to
8 another parent, that's a very extreme measure, okay? I
9 definitely agree with the part of your question that says,
10 you know, are there times when a parent is right to restrict
11 access to another parent? Yes, there are times. Okay? But
12 does that include all access to a parent to the point where
13 it becomes a termination of his rights as a parent?

14 Q Dr. Favaro, you're going way out of what my question is,
15 so let's rein it back in. I'm talking about the Austin
16 Fieldstone and Pruett study that you cited, which indicates
17 when the evidence supports the restrictive parent's position
18 or corroborates allegations of harm, then it is a case of
19 justified restrictive gatekeeping. Do you agree with that
20 statement from the study that you cited?

21 A No, I do not. Because I keep on saying it depends on how
22 restrictive.

23 Q Okay. So you don't agree with the portion of the study
24 that you've referred to?

25 A That's a mischaracterization, counsel. I don't agree that

1 the highest level of restriction is supported --

2 Q Nobody is talking about that level.

3 A I do agree --

4 THE COURT: Counsel, let the witness finish his
5 answer.

6 A I do agree that it can be appropriate for a parent to
7 restrict contact for the purposes of protecting a child.

8 Q Thank you.

9 And that a history of harsh discipline of the child or
10 child abuse is also a reason as to where there could be some
11 justified restrictive gatekeeping, correct?

12 A You uses the words "could be" and "some." So those are
13 words that encompass a lot of things and a lot of behavior.
14 But in those words that you just asked me in your question
15 that use the words "could be" and "some," I would agree.

16 Q Protective gatekeeping is a reason why a parent would want
17 to limit access for involvement of the other parent to the
18 child, correct?

19 A Limit, not eliminate.

20 Q I didn't say eliminate, Dr. Favaro. I said protective
21 gatekeeping is defined in terms of the reason a parent wants
22 to limit access for involvement by the other parent, correct?

23 A At times, correct.

24 Q And some of those reasons --

25 MR. MIN: I apologize for interrupting. I just note

1 -- I know this morning respondent had a mask on. And I'm
2 wondering if that was for illness purposes. But I notice
3 respondent doesn't have a mask on. So I want to clarify if
4 there is some illness or something that we should be
5 cognizant of. I just want to address that.

6 THE COURT: Counsel.

7 MS. SKINNER: Your Honor, I would say that's kind of
8 an inappropriate question. My client can be in control of
9 how she needs to protect herself or not. I think that she's
10 cognizant of everybody's health and safety here. So if the
11 court would request that if my client has a cough, to keep
12 the mask on, we can certainly respect that.

13 THE COURT: Counsel, you'll notice the court has put
14 an additional air filter right behind your co-counsel, out of
15 an abundance of caution. There's an excessive amount of
16 coughing where it's been disruptive to some of the witnesses
17 to be able to hear the questions. And the same for the
18 court. The court has been willing to accommodate you
19 remaining at counsel table, and co-counsel to do the same.
20 The court is not only interested in your client's health, but
21 the health of everybody in this courtroom. And one of the
22 things we've learned in the COVID restrictions is how to
23 protect each other from passing illness.

24 So if your client has any type of an illness at this time
25 that is causing her to aspirate or cough in the open air, I

1 think it would be advisable for her to wear a mask. I'm not
2 going to make an assessment -- I'm not a doctor of
3 medicine -- to tell somebody if they're capable of infecting
4 anybody else. But I think, out of an abundance of caution
5 and courtesy to the parties, if she is sick with something
6 more than an allergy, she should wear a mask.

7 MS. SKINNER: Understood, Your Honor. Thank you.

8 THE COURT: Please proceed.

9 Q And Dr. Favaro, some of those reasons that could be
10 protective and justified gatekeeping could include a history
11 of substantial intimate-partner violence, correct?

12 A That's correct.

13 Q And could include harsh parenting by the other parent,
14 correct?

15 A Could potentially, yes.

16 Q And then, again, when the evidence supports the
17 restricting parent's position, when the evidence supports it,
18 and there have been corroborations of the allegations of
19 harm, that would be a case of justified restrictive
20 gatekeeping, correct? To some level. I'm not talking about
21 the strictest level. To some level.

22 A When you say "to some level," I would agree.

23 Q And in such situations, telephonic access may be denied,
24 unless it's supervised or on speaker. That's one of the
25 protections that could be put in place, correct?

1 A It depends. It depends on how it's supervised. It
2 depends on what protocols are used. It depends on whether or
3 not the contact would be recorded. It's a very unnatural
4 setting when parents speak to their children on FaceTime or
5 on the telephone. So precautions need to be taken about how
6 that works, what the protocols are, what the logistics are.

7 Q But you did not analyze whether any of mother's -- if she
8 had restrictive gatekeeping actions in this case, if those
9 were framed due to a history of intimate-partner violence,
10 correct?

11 A No. Because I haven't spoken to the mother.

12 Q So then how can you make any conclusions about whether her
13 gatekeeping was restrictive or protective if you haven't
14 analyzed that?

15 A All of the questions that you asked me about that were
16 hypotheticals, okay? So I answered the way I answer
17 hypotheticals. You gave me a set of facts. They were
18 hypotheticals. I answered.

19 Q So you're making no findings about whether there was
20 unjustified restrictive gatekeeping here?

21 A I'm not making any findings because I'm not a judge. And
22 the judge is the only person that can make findings.

23 Q Not making any opinions on that?

24 A I think I gave you all the opinions for the circumstances
25 that you asked me.

1 Q You stated in your report, "In this case, if it is found"
2 -- meaning parental gatekeeping -- "it would, in my opinion,
3 represent a form of undue influence."

4 A Yes. That's what I said.

5 Q But, again, how can you make that opinion if you have not
6 analyzed whether the gatekeeping is a product of father's
7 abuse?

8 A Because I relied on information that was presented to me
9 by the child.

10 Q But you did not do an intimate-partner violence analysis
11 assessment here?

12 A I do not think you have to do an intimate-partner violence
13 assessment to make note of behavior that's consistent with
14 gatekeeping.

15 Q Are there certain tactics that abusers use in which the
16 child is used as a form of abuse against the other parent?

17 A Are there tactics? Yes.

18 Q And could some of those tactics include accusing the
19 parent of being restrictive?

20 A I don't -- a question that's presented to me in such a
21 general form is not something I can answer.

22 MS. SKINNER: I have no further questions for this
23 witness.

24 THE COURT: Redirect.

25 MR. MIN: Thank you, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. MIN:

3 Q Counsel asked you if you spoke to the child about
4 returning to Singapore in two separate homes. Do you recall
5 that?

6 A Yes.

7 Q Why did you talk to the child about living in two separate
8 homes if returned to Singapore?

9 A The child brought that up to me. I didn't question the
10 child about living in two separate homes. The child brought
11 it up to me by saying, "If I returned, would I have to" --

12 MS. SKINNER: Your Honor, we'd object as to hearsay.

13 MR. MIN: Your Honor, if I could be heard on the
14 hearsay issue.

15 THE COURT: Yes.

16 MR. MIN: Your Honor, in the case of *Jacquety v.*
17 *Baptista* out of the Southern District of New York, 538 F.
18 Supp 3d 325, in 2021, the court noted when there was an
19 objection to hearsay because one of the party's forensic
20 experts was testifying as to what the child told the
21 forensic, that the court relied on Rule 803(4), talking about
22 the fact that the declarant, in this case the child, is
23 expected to understand the truth and understand she is
24 providing information for purposes of diagnosis or treatment.

25 THE COURT: Counsel, slow down please.

1 MR. MIN: Providing information for the purpose of
2 diagnosis and treatment.

3 The court noted that the party seeking to restrict the
4 testimony said there's a difference between -- difference
5 because the testifying expert was a forensic, was providing
6 forensic opinion in litigation. And the court noted, "The
7 law draws no such distinction."

8 And then citing to a case from the Second Circuit in 1978,
9 *O'Gee v. Dobbs House Incorporated*, 570 F. 2d 1084, and it
10 states that, "Rule 803(4) clearly permits the admission into
11 evidence of what (a patient) told (a doctor retained for the
12 purposes of the litigation) about her condition. So long as
13 it was relied on by (a) (the doctor) in formulating his
14 opinion." And the foundation is properly laid.

15 The court allowed the child's statements to be testified
16 by the forensic evaluator because it dealt with the child's
17 history and allegations of abuse in the household from the
18 father to the mother.

19 So, Your Honor, we would renew our application that the
20 statements by the child, as it relates to the history and the
21 child's own statements with respect to the allegations the
22 mother is making, to be permissible under Rule 803 (4).

23 THE COURT: What's the nature of the case?

24 MR. MIN: This was a Hague Convention case, Your
25 Honor.

1 THE COURT: Counsel.

2 MS. SKINNER: Your Honor, if petitioner is submitting
3 his witness as someone who is providing diagnosis and
4 treatment, then we renew our request to have this witness not
5 be qualified as an expert on the grounds that he's in
6 violation of state statute that is potentially submitting
7 himself to a gross misdemeanor, which would be subject to
8 jail time and a fine.

9 MR. MIN: Your Honor, we'll brief this later. But we
10 did, during the break, find a case from the District of New
11 Mexico, *Salazar v. Seagrave*. The cite is 2004 WL 7337792.
12 The court stated, "Dr. Dvoskin's failure to comply with New
13 Mexico's regulatory requirements for out-of-state
14 psychologists to perform IPEs, does not mandate the exclusion
15 of Dr. Dvoskin's expert testimony. The admissibility of his
16 testimony will be determined at trial under the Federal Rules
17 of Evidence in *Daubert*. Plaintiff's motion to disqualify
18 Dr. Dvoskin's illegal evaluation or to bar it or strike it as
19 evidence will be denied."

20 Your Honor, this goes to weight. This goes to Your
21 Honor's judgment in terms of, again, how much weight to give
22 to the testimony. But the admissibility of the testimony, I
23 don't think, is at question.

24 Dr. Favaro's -- the statute itself specifies that Dr.
25 Favaro can't hold himself out to be a psychologist. But

1 there are several state statutes that specifically limit what
2 an out-of-state psychologist can do, including providing
3 forensic testimony.

4 There are several state statutes we found that
5 specifically limit forensic testimony. And courts have used
6 that to strike forensic testimony when you're not licensed.
7 But in our, again, limited research thus far, when the state
8 statute does not limit it, there's a distinction between
9 holding yourself out to be a psychologist and the expert
10 testimony you make at trial.

11 And this case shows that even though this psychologist was
12 maybe not permitted to perform the function in the state of
13 New Mexico, IPEs, they were still permitted to provide expert
14 testimony, Your Honor.

15 THE COURT: Counsel, anything further?

16 MS. SKINNER: Your Honor, this witness in his report
17 self-titled himself as "child and forensic psychologist" and
18 issued a report in the state of Washington. And now
19 apparently is relying upon an exception to hearsay that he
20 provided diagnosis and treatment of a patient. So we
21 continue our objection that under the law that we are under,
22 within the state of Washington, district of Washington, which
23 the rules for psychologists are different than those in New
24 Mexico, is what rules here.

25 MR. MIN: I want to be clear. We're not stating he

1 provided treatment. We're just stating what the Rule 803(4)
2 says. And I think it's a little bit misleading for counsel
3 to represent simply because we're reciting the rule that
4 we're alleging that he provided treatment in the state.
5 We're saying that is what the rule says.

6 And the court in the Southern District of New York noted
7 that there is no distinction between forensic expert
8 testimony in this regard. Clearly Dr. Favaro has stated that
9 he has come to some sort of conclusion with respect to
10 gatekeeping, undue influence, risk of harm. Those are
11 certainly, you know, maybe not medical diagnoses, but
12 opinions and conclusions he's reaching in his profession as a
13 psychologist.

14 So I wanted to draw the distinction. I know respondent
15 seemingly wants to tie him into some sort of treatment in
16 Washington. And we're not alleging that. And we're not
17 holding Dr. Favaro out as a treating psychologist.

18 THE COURT: The original response provided by counsel
19 for petitioner as far as the objection going to weight as
20 opposed to admissibility is what the court ultimately comes
21 to, counsel. And I believe the statute that you're referring
22 to deals in the context of from a licensing standpoint to be
23 permitted to do or engage in certain types of treatment or
24 care.

25 There may be consequences for him not being in compliance

1 with a state statute, but I don't believe anything that's
2 been provided to the court would be an exclusion to say, and
3 if not, then they're prevented from testifying or prevented
4 from entering any opinion in court. Does that statute go
5 that far, counsel?

6 MS. SKINNER: No, Your Honor. But the statute
7 specifically states that one cannot hold themselves out as a
8 psychologist in the state of Washington without complying
9 with those rules.

10 THE COURT: And as a result of not complying with
11 that rule, what's the consequence? It's perhaps criminal
12 prosecution or civil sanctions against the doctor, but you
13 haven't stated anything or provided any language in that
14 statute that would preclude that person from testifying in
15 court.

16 MS. SKINNER: Your Honor, then we argue that he does
17 not hold -- he doesn't hold a valid license to be able to
18 provide the testimony, to be able to provide the evaluation.
19 So if he was -- if he did not conduct the evaluation
20 according to Washington licensing requirements, that
21 evaluation should be null and void. He should not get the
22 benefit of an evaluation that was conducted unlawfully.

23 THE COURT: Then that would give the court the
24 opportunity to weigh what this doctor provided, in the
25 absence of being in compliance with statutory requirements,

1 to be able to render an opinion. So, again, it goes back to
2 the original determination made by this court. This goes to
3 weight and not admissibility.

4 MS. SKINNER: Thank you, Your Honor.

5 THE COURT: Please proceed.

6 MR. MIN: Your Honor, is there a ruling on the
7 hearsay?

8 THE COURT: Yes. He may testify.

9 Q So I was asking you and you were testifying, before there
10 was an objection, about what the child asked you about
11 returning to Singapore and the presence or possibility of two
12 separate homes. Can you talk about that?

13 A Yes. It came up in the context of me asking the child if
14 he would be afraid to go back to Singapore, what were his
15 feelings. The child reported to me that he would not want to
16 go back to a home that his mother and father lived in
17 together. Okay? The conversation then turned to, "What if
18 you weren't going back to a home where your mother and father
19 lived together?" And he said to me, "Do you mean that if my
20 mother and father were in different places and I saw them
21 each for their own time with me? I would have no problem
22 with that."

23 Q You heard Dr. Poppleton's testimony earlier that the
24 reasons the child gave to Dr. Poppleton why he didn't want to
25 go back to Singapore was because of the weather, because he

1 had more opportunity for friends than in Singapore, and
2 because he considered himself to be American. You heard that
3 testimony?

4 A Yes.

5 Q Were those any reasons -- any of the reasons the child
6 gave you about whether he wanted to stay in the U.S. or
7 Singapore?

8 A No. He did say that he was making more friends in the
9 United States. Okay? But the other statements made to
10 Dr. Poppleton seemed to me to go to mature age than anything
11 else.

12 Q What do you mean by that?

13 A He's saying that he likes it in the United States better
14 because the weather is nicer, you know. That's not a mature
15 abstraction.

16 Q Hearing that testimony from Dr. Poppleton, did that have
17 any impact on your opinion as to the child's level of
18 maturity with respect to his ability to provide an objection?

19 A Yeah. Typical eight- to nine-year-old reasoning.

20 Q Did you and the child talk about friendships he made in
21 Singapore?

22 A Yes.

23 Q Did he report to you whether he had any friends in
24 Singapore?

25 A He said he had more friends in Singapore than in the

1 United States.

2 Q Other than what you just testified to, were there any
3 reasons the child gave you that he might prefer to live in
4 the United States over Singapore?

5 A No. I think the conclusion that I came to was that his
6 preference was to live with his mom, not to live in a place.
7 His attachment was to his mother, not the location.

8 Q What was the basis for you to opine that there was undue
9 influence in this case?

10 A The child told me that he was aware of all aspects of the
11 order of protection. He said, "I know everything about the
12 protective order." Also, the child -- I asked the child if
13 his mother did not want him to speak to his father on the
14 phone. And the child enthusiastically said that she didn't.
15 Mother's behavior around the recording was significant to me
16 because -- not because she wanted the sessions recorded, I
17 offered to record the sessions in an unobtrusive way, but
18 more that she put herself -- her child in the position of
19 recording. Giving him that responsibility to record me, I
20 think, was undue influence.

21 Q Why do you think that?

22 A Because the child was clearly bothered by the iPad that
23 was next to him. And when I asked him, "Why did your mom
24 want to record me?" The child, in not so many words, told me
25 that she wanted to make sure I wasn't lying.

1 Q Did that make you feel as though there might have been
2 some potential for the child to -- withdrawn.

3 Did that make you feel like there was some sort of
4 adversarial position between you and the child?

5 MS. SKINNER: Objection, relevance.

6 THE COURT: Sustained.

7 Q Counsel asked you on cross examination about gatekeeping
8 and whether or not certain facts or certain allegations with
9 respect to IPV would have been relevant to your opinion on
10 gatekeeping and undue influence. And I believe your answer
11 was, well, you observed behavior -- or that you observed
12 behavior that was consistent with gatekeeping, irrespective
13 of that, right?

14 A Yes.

15 Q What behavior was that?

16 A The mother's participation in modifying my methodology by
17 recording.

18 Q Would you agree that there are differing levels of risk to
19 a particular child, depending on the circumstances of their
20 situation?

21 A I didn't understand the word that you said after
22 "differing levels of."

23 Q Would you agree that assuming there's domestic violence in
24 the home, that the level of risk to a child can depend on
25 other circumstances?

1 A Yes.

2 Q You heard some testimony earlier that if a child is
3 suffering from some mental-health issues, perhaps, like
4 depression, they may be more vulnerable to those risks,
5 right?

6 A Correct.

7 Q And there are other circumstances, is there not, that
8 would contribute to how much risk could be present to a
9 child?

10 A Yes.

11 Q Such as?

12 A Such as the proximity of the parents to one another during
13 visitation changes and the possibility of any criminal
14 stalking activity that might occur.

15 Q You heard testimony from Dr. Poppleton that a child's
16 resiliency could impact on the risk of harm to the child,
17 correct?

18 A The degree to which a child is resilient, which is sort of
19 an invulnerability to stress, would be a factor.

20 MR. MIN: No further questions, Your Honor.

21 THE COURT: Recross?

22 RECROSS EXAMINATION

23 BY MS. SKINNER:

24 Q Dr. Favaro, the child indicated to you that he does not
25 want to go back to a home where his mother and father lived

1 together, correct?

2 A Yes.

3 Q And the child told you that his friends would miss him in
4 Singapore, but that he wants to live here in the U.S.,
5 correct?

6 A Yes.

7 Q So he's taking other people's feelings into consideration,
8 right, that his friends would miss him?

9 A Okay. Yeah.

10 Q And then despite the fact that he believed his friends
11 would miss him, he still wanted to live in the U.S., right?

12 A He didn't tell me he wanted to live in the U.S.

13 Q So if that statement were true that was included in
14 Dr. Poppleton's report, that the child said, "My friends
15 would miss me, but I want to live here," then that would
16 indicate that he can take other's feelings into mind yet
17 still have his own conviction, correct?

18 A In that particular instance, yes.

19 Q And the child did call the U.S. his home, correct?

20 A Not to me.

21 Q How much were you paid for your work in this case?

22 A I was currently paid \$40,000.

23 Q What do you mean by "currently"?

24 A That's what -- sorry. That's what the father paid me to
25 date. I don't know what his additional billing is going to

1 be yet.

2 Q To date, through today?

3 A Yes.

4 Q And you testified that the child could not talk to the
5 father -- the child was telling you that he could not talk to
6 his father, right?

7 A Correct. No, no, that's not correct.

8 I asked a much different question. I asked the child if
9 his mother wanted him to speak to his father.

10 Q So you asked the child what his mother wanted?

11 A Yes.

12 Q Okay. And there was a protective order in place so that
13 the child and the father could not talk, in any event,
14 correct?

15 A Yes. The child brought that up to me, yes.

16 Q But that was, in fact, in existence, correct?

17 A Yes.

18 Q I believe you just testified that mother put the child in
19 the position of securing the recording?

20 A The mother put -- the mother didn't record. The child
21 recorded. The mother asked me if I minded if the child would
22 record me.

23 Q I thought you testified that the mother went into the room
24 and placed the iPad on the table?

25 A She certainly did.

1 Q And when you asked the child why he thought mom wanted to
2 record, didn't he say, "To make sure that you don't tell me
3 something I'm not supposed to know.

4 A I don't think he said those words, no.

5 Q Other than telling the child that his father loved him,
6 did you pass on any other feelings that you believed that the
7 father had for the child?

8 MR. MIN: Objection, mischaracterization of the
9 testimony.

10 THE COURT: Overruled. You may answer the question.

11 A No, I didn't say anything.

12 Q You heard testimony about father putting hidden cameras in
13 mother's home to observe her, did you not?

14 A From the testimony or from the child?

15 Q From the testimony.

16 A Yes.

17 Q And you heard testimony that that -- that father admitted
18 that was done without mother's permission, correct?

19 A Correct.

20 Q Was that fact considered in your evaluation at all?

21 A Oh, yes.

22 Q Did you mention it in your report?

23 A No, I did not, because it was collateral.

24 Q What do you mean?

25 A I got that information at the trial. And I got it from

1 the child. But because I was not evaluating the father, it
2 was collateral information.

3 Q So you didn't find that information to be relevant to put
4 into your report when discussing whether there was a grave
5 risk of exposure of harm to the child?

6 A Well, I didn't put it in the report, but I can certainly
7 consider it now.

8 Q But you didn't consider it then?

9 A I didn't. I probably should have.

10 MS. SKINNER: No further questions.

11 THE COURT: Redirect?

12 MR. MIN: Nothing further.

13 THE COURT: Any objection to this witness being
14 excused?

15 MR. MIN: No, Your Honor.

16 THE COURT: From the defense?

17 MS. SKINNER: Excuse me?

18 THE COURT: Any objection to this witness being
19 excused?

20 MS. SKINNER: No, Your Honor.

21 THE COURT: You may step down, sir. You are excused.
22 And your next witness, counsel.

23 MR. MIN: Yes, Your Honor. The next witness we would
24 call is Dr. Deborah Day, who I believe is -- can we take a
25 short bathroom break?

1 THE COURT: Why don't we take our afternoon recess.

2 (Recess.)

3 THE COURT: Counsel, your next witness.

4 MR. MIN: As I stated, we're calling Dr. Deborah Day
5 as our next witness.

6 THE CLERK: Dr. Day, if you could please raise your
7 right hand.

8 DEBORAH DAY,
9 having been sworn under oath, testified as follows:

10 THE CLERK: If you could please state your first and
11 last names and spell your last name for the record.

12 THE WITNESS: Absolutely. Deborah, D-E-B-O-R-A-H,
13 first name, Deborah. Last name Day, D-A-Y.

14 MS. SKINNER: Your Honor, at this time I would like
15 to renew our motion regarding this witness. Your Honor
16 previously excluded Dr. Day's report on a motion in limine
17 that we submitted. We ask the court to not hear testimony
18 from this witness as cumulative under 403. She will be
19 testifying as to the same thing that Dr. Favaro did, which
20 under his testimony, he was providing rebuttal of
21 Dr. Poppleton's, critique of his methodology, critique of
22 what Dr. Poppleton considered, and the standards
23 Dr. Poppleton used, et cetera. And I believe this witness
24 will testify regarding the same thing.

25 THE COURT: Well, counsel, since I'm not clear how

1 far this witness is going to go on her examination, I believe
2 I communicated before, if you believe as the witness is going
3 forward it's providing cumulative testimony, I now have
4 context as to whether or not it will be cumulative or not.
5 You're entitled to make an objection. But as far as me
6 giving a wholesale ruling precluding the testimony, that will
7 not be granted.

8 MS. SKINNER: Thank you, Your Honor.

9 THE COURT: You may proceed.

10 MR. MIN: Your Honor, with that in mind, we would
11 like to just move things along and offer 107 into evidence,
12 which is her CV and her short report, rebuttal report. And
13 to the extent Your Honor finds anything to be cumulative,
14 perhaps that can be stricken afterwards. But moving it
15 along, I'd rather have that admitted.

16 THE COURT: 110, counsel?

17 MR. MIN: 107.

18 THE COURT: Okay. Counsel?

19 MS. SKINNER: Your Honor, we have the same objection.
20 We have no objections to the CV, but the content of the
21 report is this expert's rebuttal report, which we're
22 objecting to as being cumulative.

23 THE COURT: All right. I'll admit 107 regarding the
24 CV. And I will reserve ruling on the full admissibility of
25 107 until after I've had the opportunity to hear testimony

1 and counsel's objections to the content of the report.

2 Please proceed.

3 (Exhibit 107 was admitted.)

4 DIRECT EXAMINATION

5 BY MR. MIN:

6 Q Dr. Day, can you please describe your current occupation?

7 A I am a Florida licensed psychologist in private practice
8 at Psychological Affiliates. We have two offices located in
9 Winter Park and Palm Beach County.

10 Q How long have you been a practicing psychologist?

11 A Since 1985. I believe that's 39 years.

12 Q Okay. And what is your practice focused on?

13 A I am primarily a clinical and forensic psychologist. I
14 continue to see patients, although I limit my practice of
15 patients.

16 I am primarily doing forensic work in the family-law
17 arena. I do what are called "social investigations," used to
18 be called "custody evaluations." I do psychological
19 evaluations. I do consulting in all sorts of legal cases
20 where I am not testifying. And I do work-product reviews or
21 rebuttal of other psychologists' work product.

22 Q Can you give the court a brief background of your
23 education, please?

24 A Yes. I have an AA degree in psychology from Edison
25 College in Fort Myers. I have a bachelor's degree in

1 psychology from the University of Central Florida. I have a
2 master's degree in clinical psychology from Florida Technical
3 University in Melbourne, Florida. And a doctor in psychology
4 or a PsyD degree in clinical psychology. I obtained that in
5 1985 from Florida Institute of Technology.

6 Q What professional associations do you belong to?

7 A I am a member of the Florida Psychological Association,
8 the Association of Family and Conciliation Courts, the APSAC,
9 which is the association for the prevention of child abuse.
10 I am a member of the Florida bar. I'm not a member; I'm an
11 affiliate member. They allow non-attorneys to be members.
12 I'm also a member of the International Collaborative
13 Association and the Florida Association of Collaborative
14 Professionals.

15 Q I think you mentioned the Association of Family and
16 Conciliatory Courts; is that right?

17 A Yes. AFCC.

18 Q That's what Dr. Poppleton testified he's a member of as
19 well?

20 A Yes.

21 Q And have you written in the area of child and forensic
22 evaluations?

23 A Yes, I have. I published several articles in the *Journal*
24 *of Forensic Psychology*. They're peer-reviewed journal
25 articles on child custody, the work around family law. I've

1 also published a book in the area of child abuse and have
2 several peer-reviewed articles in child abuse.

3 Q What about presentations? Have you given any
4 presentations or lectures or CLEs on the issue of child
5 forensic evaluations?

6 A Yes. I am a regular speaker in Florida at the Florida
7 Judicial College, Florida Judicial Advanced College and new
8 judges college. I'm a regular speaker at the Florida Bar,
9 the Academy of Matrimonial Lawyers. They're national and
10 international conferences.

11 I speak at the local Florida association such as the FACP,
12 or the Florida Association of Collaborative Professionals. I
13 speak regularly at Florida's largest family-law event. I
14 will be speaking on Friday. We'll have about 1,800 judges
15 and family lawyers present. So it's geared towards board
16 certification renewals and new attorneys coming in for board
17 certification.

18 Q Do you have any training in forensic evaluations?

19 A Yes. My internship was under the supervision of a
20 forensic psychiatrist and forensic psychologist. So I did my
21 residency under them. They then subsequently hired me.

22 My CEs, my continuing education, because I'm a licensed
23 psychologist, a licensed mental health professional, and a
24 certified family mediator, I'm required to take about 70
25 continuing education credits every two years. And I

1 primarily focus on forensic psychology in my continued
2 training.

3 Q And in your career, have you ever been appointed by a
4 court or conducted a forensic evaluation for children and
5 families?

6 A Yes.

7 Q How many times, would you say, in the last year or so?

8 A I usually get an order every couple of weeks. I probably
9 average about 20 per year. They usually take two to three
10 months, sometimes longer to get done. I can tell you in
11 terms of testifying, last year I testified 39 times in either
12 a deposition, a hearing, or a trial, in family or civil
13 matters or Hague.

14 Q Okay. And have you been -- what areas have you been
15 qualified to give testimony in?

16 A I have been qualified generally as a clinical and forensic
17 psychologist with subspecialties in psycho-legal family-law
18 issues, domestic violence, child abuse, conflict families and
19 traumas.

20 Q Have you ever, as an expert witness, testified on issues
21 concerning children and their interactions with their
22 parents?

23 A Yes. That is primarily the focus of my practice on a
24 day-to-day basis.

25 Q Have you ever provided testimony in Hague Convention

1 cases?

2 A Yes, I have.

3 Q How many times?

4 A Last year, one time. I was hired to do a risk assessment
5 of a father in a case coming out of Sweden. Prior to that, I
6 have two consulting cases in the UK, where I didn't testify,
7 but I was a consultant on a team.

8 I've had two cases where I looked at grave risk and mature
9 age, coming out of South America, where I was appointed by
10 the judge in Florida to evaluate the children based on those
11 two questions. And I have a case in Germany where I was
12 hired by the mother to evaluate her child who had been
13 abducted to Germany. The case ultimately settled, so I did
14 not testify.

15 Q And --

16 A So I think total six, today seven.

17 Q Not including the ones in which you were consulted, did
18 you conduct forensic evaluations in the other cases?

19 A I did.

20 Q You said a couple of those cases or some of those cases
21 involved risk assessment for the child. And some of them
22 involved the child's maturity and objections, right?

23 A Yes.

24 MR. MIN: At this time we'd move to have Dr. Day
25 admitted as an expert in forensic psychology.

1 THE COURT: Counsel, any objection?

2 MS. SKINNER: No, Your Honor.

3 THE COURT: Accepted. Counsel, please proceed.

4 Q Dr. Day, could you briefly describe what you were asked to
5 do in this case?

6 A I was asked to review Dr. Poppleton's letter to the court,
7 to look at it in terms of standard of care for the practice
8 of forensic psychology, and particularly in Hague cases, and
9 the questions he was asked to answer.

10 Q Did you evaluate the child in this case?

11 A I did not. I did not meet with anyone or evaluate anyone.
12 It was pure rebuttal work, product review.

13 Q Did you at some point review Dr. Favaro's report in this
14 case?

15 A I did, after he published it.

16 Q Okay. And in what ways does the task you were provided
17 differ from the report Dr. Favaro produced?

18 A Dr. Favaro worked primarily, in my opinion, in his
19 rebuttal, looking at the interviews with the child and doing
20 a second interview. And really assessing the methodology of
21 Dr. Poppleton, in the child's arena, by having those
22 interviews. And then meeting with the father in a collateral
23 interview. So that was very different than what I did.

24 Q Why do you say it was different from what you did?

25 A I did not meet with anyone. Mine falls within the four

1 corners of Dr. Poppleton's report and his methodology. So he
2 did process. I did methodology.

3 Q What do you mean when you say the "four corners of
4 Dr. Poppleton's report"?

5 A So I looked at the data that Dr. Poppleton looked at. I
6 did not go out and gather my own data. I looked at his
7 report and his underlying data points.

8 Q Why is it important -- what's the importance of a rebuttal
9 work product review in a case like this?

10 A So often we see the same data and have different opinions
11 on what that data might generate, or the ideas behind that
12 data. And we look at the standard of care. Does this report
13 meet what we call a "minimum standard of care," based on the
14 forensic community of psychologists? So we look at that.
15 And then, does this data meet that standard? And then, does
16 this data have alternative potential hypotheses within the
17 data that weren't discussed? So that's really the
18 methodology component of what I did.

19 Q What criteria, if any, do you utilize in doing a rebuttal
20 work-product review?

21 A I didn't hear that second word you said. Could you repeat
22 that, please?

23 Q What criteria, if any, do you use in doing a rebuttal
24 work-product review?

25 A So I use two criteria. One, I did review the AFCC

1 guidelines for child custody evaluations in family-law cases.
2 They have promulgated new criteria in 2022. I reviewed those
3 in relationship to Dr. Poppleton. And I also reviewed the
4 specialty guidelines for forensic psychology promulgated by
5 the American Psychological Association. They are the only
6 association that generates guidelines specific to
7 psycho-legal practice. It's not for family-law cases. It's
8 general forensic practice and the things that you should be
9 mindful of. And they provide those guidelines. So I looked
10 at both of those.

11 Q And ultimately, did you produce a report or prepare a
12 report that detailed your findings and conclusions?

13 A I did. Yes.

14 Q I'm going to show you a document marked for identification
15 as Petitioner's 107. And, Dr. Day, we'll scroll through, I
16 believe, the five pages of this. And if you can identify
17 this document for the court.

18 A Yes.

19 Q Is this the report that you produced?

20 A Yes, sir, it is.

21 Q Did your report contain specific critiques of
22 Dr. Poppleton's report?

23 A Yes, it did.

24 Q What were those critiques?

25 A My review of Dr. Poppleton's report indicated that he did

1 not meet what I would call the standard of care for doing a
2 forensic assessment. He basically did interviews. He
3 acknowledges -- and I appreciate that he acknowledged that
4 the interviews are not reliable sources of data. They're
5 data points of somebody's perception rather than facts.

6 He said he was answering two questions: Grave risk and
7 mature age. Ultimately, he does not answer those questions.

8 So my critique was his report is really a regurgitation of
9 the mother's history and an interview with the child, without
10 any conclusions. He did not render any, what I would call,
11 alternative hypotheses in the case as part of forensic
12 practice.

13 After listening to his testimony, I realized that he had
14 not, in his report, followed the guidelines of the
15 professional association in which he is a member, AFCC,
16 regarding Zoom. He did not follow standard 13.1, 13.2 or
17 13.3 regarding the methodology of doing a forensic interview
18 via Zoom.

19 I found that most of the information was common sense.
20 That the court could easily have determined or gathered that
21 information via testimony from the court. And I think that
22 reviews, basically, my opinions.

23 Q What do you mean when you say you later realized that
24 Dr. Poppleton did not comply with the AFCC guidelines 13.1,
25 13.2 and 13.3 regarding Zoom evaluations?

1 A In listening to him testify -- the AFCC guidelines for
2 custody work and family law says that you will get written
3 consent for Zoom, that you will identify the limitations of
4 using Zoom. In your written consent you will also identify
5 how you will confirm that people are alone in a room. You
6 will take special caution with children. Using Zoom is very
7 difficult to evaluate them, so you have to identify their age
8 and their maturity and ability to function in that setting.
9 You are also, in your report, supposed to identify the
10 limitations and how it impacts on the integrity of your data.
11 And that children should be, in the report, should locate the
12 -- where the children or the interviewer is located should be
13 identified in the report.

14 So in reading through his report, none of that information
15 was contained. So it was only through his testimony that I
16 learned that he did this, not in person, but in a Zoom
17 setting.

18 Q You heard the testimony of Dr. Poppleton a couple weeks
19 ago and earlier today.

20 A I did.

21 Q Did you have any critiques about his lack of testing in
22 his evaluation process?

23 A Psychologists are unique. We have a couple of things that
24 we can do that other mental health professionals cannot do.
25 We can do psychological testing and psychological

1 instruments. Instruments are another way to gather
2 information. Psychological tests are valid and reliable
3 tests that measure or assist in measuring the questions
4 before the court. So when looking at children and looking at
5 their maturity, one of the things you want to know is their
6 cognition. So there was no testing about cognition. What's
7 this child's IQ? Is he in the normal range? Is he above
8 average? Is he below average? There's no identification or
9 even an observation of that.

10 So psychological testing gives us reliable and valid data
11 in which we can test our own clinical or forensic opinions or
12 judgment as we're going through an assessment.

13 Q You heard Dr. Poppleton's testimony that his aim of his
14 report was not to provide an opinion, correct?

15 A I heard his testimony, yes, I did.

16 Q Okay. Would it be -- well, withdrawn.

17 You also heard Dr. Poppleton's testimony that he was --
18 his role was to provide information to the court?

19 A Yes. I heard him say that.

20 Q Now, would it be fair to say that the results of
21 psychological testing with respect to this child's maturity
22 and level of intelligence, perhaps through an IQ test, would
23 have provided the court better data with respect to his level
24 of maturity?

25 A Not only would it have provided additional data, it would

1 have been consistent with our standards of using multiple
2 methods of information gathering. So we have that uniqueness
3 of using psychological testing instruments. And sometimes
4 they're not tests, but they are instruments that we use, or
5 questionnaires. All of those things help us gather
6 information, along with then testing what the school records
7 would say, what the teacher might say. So it helps us craft,
8 developmentally and intellectually, where a child might be.

9 Q Was Dr. Poppleton's failure to gather collateral sources
10 of information from individuals other than the mother and the
11 child, or documents perhaps, other than the school records he
12 testified to, something that you critiqued in your report?

13 A Yes. I talk about the limited sources of the information.
14 And when you think about doing forensic assessments, you
15 think about collateral data from other professionals, other
16 than ourselves.

17 So where can we get people who have other objective data?
18 We don't typically think about mom and dad in a dispute
19 having objective data. They tend to want to present their
20 narrative.

21 So we look at medical records as an example. Was the
22 child ever in therapy? What does the schoolteacher say?
23 What do the school records say? Was there ever a school
24 assessment? So we look outside of this family for those
25 pieces of data that help us understand the context in which a

1 child makes a statement.

2 Q Are there any tests or instruments that could have been
3 helpful to ascertain the presentation by the mother?

4 A Certainly. An evaluation of the mother would have been
5 helpful to the court to understand her impression management,
6 as an example. Psychologists have instruments called
7 "impression management instruments" where we can look at a
8 person, whether they're faking good, putting their best foot
9 forward, or faking bad.

10 As an example, in work comp cases, workman's comp cases,
11 people tend to have more symptoms and more problems. In
12 child custody cases, they tend to put their best foot forward
13 and have a very unrealistic positive image of themselves. So
14 we can understand the lens in which a person is giving us the
15 information.

16 The next is objective personality tests that look at
17 personality strengths and weaknesses. Dr. Poppleton talked
18 about the MMPI-2. I love the MMPI-2. It gives us
19 information beyond what a person will tell us.

20 I also use the MMPI-3. The MMPI-3 also has child custody
21 norms. They have been adapted from the MMPI-2-RF. So they
22 are exactly the same. It's just your comfort level. Both
23 are good tests.

24 There are other tests, like the personality assessment
25 inventory. It helps us to rule out personality disorders,

1 mental health issues, substance abuse issues. So those are
2 all helpful as we craft our opinions in a case to have those
3 objective data points.

4 We also have many instruments that parents take regarding
5 their children. So it helps us see, through the eyes of the
6 parents, objectively how they see their children.

7 There are things, like you've heard, the Child Behavior
8 Checklist. There's the BASC. The Behavioral Assessment
9 System For Children. You give them both to the parents and
10 to the child. And you compare those to your own impressions
11 of that child. So those are important information gathering,
12 when you have access to both parents. Sometimes you don't
13 have access, like in Hague cases you may not have access.
14 But the more data points, the more you're going to understand
15 the point of view that that parent and that child are talking
16 through.

17 Q Would any of these tests or inventories or instruments --
18 could they have been helpful in assessing possible risks of
19 harm to a child?

20 A Absolutely.

21 Q How so?

22 A We have instruments such as the HCR, which is a risk
23 assessment. It looks at the totality of the data about a
24 person and puts it in categories regarding risk. And we, we
25 cannot say there's no risk. We don't have that ability.

1 Courts can say "no." We can say there's low risk, there's
2 medium risk, there's high risk.

3 As an example, somebody -- I just evaluated an individual.
4 He brought a gun out on a golf course and threatened
5 somebody. He had a young child. The judge ordered a risk
6 assessment. I was able to assess the risk.

7 MS. SKINNER: Objection as to this narrative.

8 THE COURT: Sustained, counsel.

9 Q Well, if you could answer without talking about specifics
10 about how this test that you mentioned -- I think you said
11 the HCR or HRC?

12 A Yeah.

13 Q How could that be helpful in evaluating risk of harm to
14 the child?

15 A Well, it's a risk. It categorizes a person's history and
16 current status regarding their risk across a number of
17 different categories. Whether that's alcohol, prior criminal
18 acts, impulsivity, child abuse allegations, domestic
19 violence, all of that information is categorized and rated in
20 terms of a risk.

21 Q Is there anything that can test trauma in a child?

22 A Absolutely.

23 Q Such as?

24 A The Trauma Symptom Checklist for children is a reliable
25 and valid measure of trauma. So trauma can be from anything.

1 But what we're really looking at, how does that trauma
2 demonstrate in the behaviors or symptoms and emotions in a
3 child? So it gives us an objective way of measuring what we
4 typically see from a trauma survivor.

5 It goes as far as to say, is it clinically significant
6 enough to reach a post-traumatic stress disorder diagnosis?
7 Meaning, if they meet the DSM-5-TR criteria, does that
8 clinical assessment meet up with the DSM-5 criteria for PTSD?
9 It may not. That doesn't mean the child doesn't still have
10 trauma, but it gives us a better view of how that trauma
11 looks like and how it's manifesting in symptoms and
12 behaviors.

13 Q Is there a relationship between trauma and risk of harm to
14 a child?

15 A Yes. Well, let me caveat that, if I may. Risk of harm
16 means there's a potential for physical or psychological
17 injury. It's a risk for. The trauma has to be experienced,
18 in terms of something traumatic happening, and then
19 manifesting the symptomology or behavioral changes of that
20 trauma impact.

21 Q You heard the testimony earlier from Dr. Poppleton that a
22 child who may suffer from depression could be potentially at
23 greater risk of harm than a child who is not suffering from
24 depression.

25 A Children who have -- so we have to distinguish between

1 sadness and adjustment and depression. Children have a range
2 of emotions, just like adults do. So we have to be careful
3 when we use words like that. So has there been a clinical
4 diagnosis of depression, or is that a descriptor to talk
5 about an adjustment because they relocated or they're going
6 through a divorce in their family?

7 So he said depression makes children more vulnerable.
8 That falls into a mental-health category. So when a child
9 has a mental-health issue, whatever that might be, it could
10 make them more vulnerable. It depends on what vulnerable
11 you're talking about, also. Vulnerable to what?

12 Q Right. It would be fair to say that a risk assessment to
13 a child involves several considerations specific to that
14 child, specific to the child's circumstances and other
15 considerations, correct?

16 MS. SKINNER: Object to leading.

17 THE COURT: It is leading, counsel. Rephrase.

18 MR. MIN: Sure.

19 Q Generally, what do you look for when you undertake a risk
20 assessment to a child?

21 A Well, the first thing I want to know is their cognition.
22 What is their ability to understand and process information
23 from a cognitive standpoint? What's their intellectual
24 ability? Then I look at their maturity. What is their
25 maturity? Where do they fall on that continuum of

1 development?

2 So as an example, an eight-year-old would fall between six
3 and 11, and we would go through the stages of psychosocial
4 development. That includes cognition, social relationships.
5 Then you look at categories within social relationships. Is
6 this child a leader? Does he fall in the middle of his peer
7 group? Or is he a follower? Then we look at emotions. How
8 did that eight-year-old or six-year-old or eleven-year-old
9 manage their emotional regulation? Emotional regulation
10 starts to develop around the age of eight where children get
11 a better handle on their emotions.

12 So you kind of think about an eight-year-old compared to a
13 four-year-old, who would have a temper tantrum. An
14 eight-year-old shouldn't be having four-year-old temper
15 tantrums. So we're gauging their emotional functioning and
16 maturity. We look at that category or risk.

17 Then we look for attachments. Attachments are so
18 important in looking at risk. So children really fall into
19 three or four categories of attachments. About 65 percent of
20 children fall into a secure attachment category where they
21 have a secure attachment with both parents; that's the
22 healthiest attachment.

23 And even within that secure attachment, there may be a
24 hierarchy of preference attachments. So I like my mom better
25 than my dad, but I'm attached and bonded to both of them.

1 Then as we go down the continuum, we're looking at whether
2 they have anxious attachments. They can't predict their
3 parents will meet their emotional needs, so they develop
4 maladaptive coping strategies. About 15 to 20 percent of
5 cases, children have insecure attachments.

6 Then the worst category is disorganized anxious
7 attachments, where they're unable to rely on their parents to
8 meet their emotional needs, their day-to-day needs, their
9 need for shelter, food and caregiving. That's where the risk
10 is, really, in these two second categories. So we have to
11 evaluate attachments.

12 The last category I think is important to evaluate is
13 resilience. Children fall on a continuum of a resilience.
14 Children are who resilient can deal with trauma, they can
15 deal with their parents' divorce, they can deal with some
16 events happening, and they move on and do relatively well.
17 It doesn't change who they are. They're resilient from it.

18 Then we go down the continuum and we see non-resilient
19 children or children who really are resistant to change.
20 They don't like their schedule changed. They don't like to
21 eat certain foods. They are affected by texture, bed time.
22 Any changes to their routine. So those are the bookends on
23 resiliency versus resistance. So we need to evaluate that.

24 All of those categories for psychologists help us evaluate
25 the needs of that child, where he is developmentally, and

1 risk.

2 Q How does domestic violence, IPV, or coercive control
3 relate to these categories you just testified to when doing a
4 risk assessment?

5 A So IPV talks about domestic violence. Typically physical,
6 can be emotional, can be sexual, can be psychological abuse,
7 within married or intimate partners. So it's a term of art
8 that we use to talk about domestic violence within marriages
9 or partnerships.

10 Coercive control is the power and control dynamic within
11 IPV. Now I forgot your question. Could you restate it,
12 please?

13 Q Yes. How does IPV or coercive control relate to these
14 categories that you just testified to when it comes to doing
15 risk assessments?

16 A So let's just take resilient children. Resilient children
17 may have some knowledge of some things happening in their
18 family, but they're resilient, so they're not -- they don't
19 receive that depth of trauma, where you have a more resistant
20 child who is going to experience those same events with much
21 more difficulty and traumatically. So, again, knowing that
22 child is going to assess how they manage domestic violence in
23 their family.

24 Younger children sometimes are unaware, they think
25 domestic violence, or arguing, or coercive -- they don't

1 really understand coercive control because they normalize it
2 within their family.

3 Older children, adolescents are more attuned to not just
4 the fighting. It's not fighting; it's abuse. And they
5 become more acutely aware of it. And sometimes they try to
6 intervene. Sometimes they run away. Sometimes they
7 emotionally dysregulate. They certainly don't do better
8 because of it. They tend to have more risk for drug and
9 alcohol problems, poor peer relationships or academics.

10 So, again, it's a continuum based on the development of
11 the child and all those personality characteristics that
12 we've talked about.

13 Domestic violence is not one size fits all. We don't just
14 make a blanket statement. We have to evaluate the child for
15 those issues. And we have to evaluate the parents so we can
16 understand how those dynamics impact upon the child, from
17 their perspective.

18 Q And do you believe that Dr. Poppleton drew any sort of
19 nexus between this child and the allegations of domestic
20 violence presented by the mother?

21 A He did not in his report, nor did he on the stand when he
22 was testifying.

23 Q Why do you say that?

24 A Because he just said generally in his report that domestic
25 violence isn't good for families. And I think we all can

1 agree to that. And then on the stand he basically said, I
2 didn't reach opinions about that, I put out the data, that's
3 for the trier of fact to determine.

4 Q Now, do you think there's such data provided by Dr.
5 Poppleton to do a proper risk assessment to this child?

6 A There was not a risk assessment to this child.

7 Q But my question is, based upon the data provided by
8 Dr. Poppleton in his report, would that data be sufficient to
9 do a proper risk assessment to this child?

10 A In my opinion, no.

11 Q Why not?

12 A It's not multiple methodologies that psychologists are so
13 good at doing. He talked to the child. He talked to the
14 mother. He looked at some data. He didn't identify what
15 data he looked at. Today I heard that he looked at the
16 school records, after the fact, after his opinions.

17 So there's not this multiple look at this child from
18 multiple sources of information.

19 I did not see that he did any collateral interviews with
20 other people outside of the family to get a feel for the
21 risk, resiliency, maturity of the child. And then we didn't
22 use any psychological tests that really help us hone in on a
23 risk assessment and whether it's low, medium or high risk for
24 a child in a particular situation. So there was general
25 information about risk and some information from interviews.

1 But it wasn't formulated into opinions because they were
2 missing pieces of data.

3 Q You talked about a few different criteria or categories
4 that you consider when you go through a risk assessment. And
5 I want to walk you through those. So the first thing you
6 mentioned was intellect. Do you believe Dr. Poppleton
7 sufficiently assessed the child's intellect?

8 A So he does not talk in his report about the child's
9 intellect. So I don't know. It seems from the vocabulary,
10 he's at least average. But he could be gifted, which is a
11 whole other category that we would need to talk about.
12 Gifted children are very different than children with average
13 cognitive skills. So I did not see where we could say,
14 cognitively, where this child was functioning.

15 Q With respect to maturity and development, do you believe
16 that Dr. Poppleton adequately assessed the child's maturity
17 and development as it relates to doing a proper risk
18 assessment?

19 A In my opinion, no. He asked good questions in the
20 interview, but he didn't take those questions, explore them
21 further and come to a conclusion about the maturity of this
22 child. Does he look like other eight-year-olds? Does he
23 fall into that Piaget category of development that we're all
24 familiar and trained in? I didn't see any assessment of
25 that.

1 Q What about the child's ability to emotionally regulate
2 himself or emotional regulation? Did Dr. Poppleton assess
3 the child's emotional regulation capabilities?

4 A Not that I recall, no.

5 Q What about assessing the child's attachments to his
6 parents? Did Dr. Poppleton adequately assess the child's
7 relative attachments to his parents?

8 A In my opinion, no.

9 Q Based upon the data that you reviewed in Dr. Poppleton's
10 report, would you be able to conclude whether the child has a
11 secure attachment to one, or -- either or both parents, has
12 an anxious attachment, or a disorganized anxious attachment?

13 A From the data alone in his report, no, I could not assess
14 that.

15 Q What about the child's resilience? Dr. Poppleton
16 testified a little bit about the child's resilience. But do
17 you believe that Dr. Poppleton's report adequately assessed
18 the child's resilience?

19 A I don't recall in his report the word "resilience" being
20 used.

21 Q Did Dr. Poppleton assess the child's understanding of the
22 circumstances and situation he's in?

23 A He interviewed him and asked what I would call reasonable
24 questions. But then he doesn't turn that data into an
25 opinion or doesn't seek other data points to make an opinion

1 on those issues. So, no.

2 THE COURT: Counsel, why don't we take a stretch
3 break.

4 (Stretch break.)

5 THE COURT: Counsel, before we take up, could you
6 give me an assessment of the remaining witnesses to testify?

7 MR. MIN: Yes, Your Honor. We have Dr. Day. We have
8 one expert from Singapore.

9 THE COURT: Who is that?

10 MR. MIN: Kee Lay Lian, and she should be in the
11 waiting room. And we may or may not call my client for a
12 quick rebuttal. But we are at the tail end. Miss Kee will
13 -- her testimony should be a half hour on direct.

14 THE COURT: How do you spell her last name, counsel.

15 MR. MIN: K-E-E.

16 THE COURT: I have K-A-Y, L-E-E.

17 MR. MIN: Oh, I could be mistaken.

18 THE COURT: That's the person you're referring to?

19 MR. MIN: Yes.

20 MS. SEIPEL: Your Honor, because you inquired of my
21 opponent here, we do plan to call Dr. Poppleton and likely
22 Ms. Sashidhar in our rebuttal.

23 THE COURT: So the remaining witnesses will not be
24 called, and both parties will confirm that. Correct,
25 counsel?

1 MS. SEIPEL: Correct.

2 MR. MIN: I don't think we have any other remaining
3 witnesses on our amended list. But, yes.

4 THE COURT: I'm looking at the witness list that was
5 provided to the court, and there's about 15 people.

6 MR. MIN: Those are all respondent's. I guess we can
7 address this when the time arises; I'm not entirely sure how
8 respondent would be called in rebuttal on her own case.

9 THE COURT: Any reason to believe we won't finish
10 this case tomorrow?

11 MR. MIN: I think we should be done in the morning,
12 frankly. And I was going to ask Your Honor about summations
13 at the end of today, but we can talk about that now.

14 THE COURT: No. What's your assessment of your
15 summary conclusion statement to the court?

16 MR. MIN: I'm sorry?

17 THE COURT: Give me your estimate on how much time
18 you'll need.

19 MR. MIN: For summation?

20 THE COURT: Yes.

21 MR. MIN: We can do summation for 15 minutes, we can
22 do summation for an hour, it's really up to Your Honor. Half
23 an hour to 45 minutes would be fine.

24 THE COURT: Counsel.

25 MS. SEIPEL: Hour, hour and a half.

1 THE COURT: I'll tell you what, I'll see where we are
2 tomorrow. Tomorrow is Wednesday, counsel, and this court has
3 other matters and other hearings set Thursday and Friday.
4 And then the court is unavailable next week. So to get this
5 case completed, we need to move in that direction with that
6 understanding. Okay?

7 Please continue your examination of the witness.

8 MR. MIN: Thank you.

9 Q Did you develop any alternate hypotheses based upon
10 Dr. Poppleton's data in his report?

11 A Based on his data points, I offered alternatives to think
12 about. Not that I'm rendering them as opinions, but they're
13 hypotheses that the data could, in fact, lead us to those
14 conclusions.

15 Q What were those alternate hypotheses?

16 A The first one was that the mother was sharing
17 inappropriate information with the child, both financial
18 information and litigation information. The child talked
19 about that. And that goes to a potential undue influence.

20 The next one is that there is data suggesting attachments.
21 Could it be that he is securely attached to both parents and
22 has that appropriate attachment? That wasn't explored. So
23 that's an alternative hypothesis.

24 The child did not report to either Dr. Poppleton or
25 Dr. Favaro, physical or psychological abuse or injuries. So

1 a hypothesis is that he is not at risk. The mother was
2 having exclusive access to the child. The father has no
3 contact with the child. So we have to explore what kind of
4 influence she could be having on an eight-year-old who is
5 being interviewed by professionals. It goes to that first
6 category of providing inappropriate influence or information.

7 The mother could be a restrictive gatekeeper. Restrictive
8 gatekeeping, you've heard a lot about that today, is an
9 inappropriate behavior in either restricting the child or
10 information or things from one parent for reasons of their
11 own psychological makeup. And there are often very complex
12 reasons for restrictive gatekeeping. It's not an easy thing
13 to understand. But that's an alternative to protective
14 gatekeeping.

15 And I thought that there were cultural influences that
16 needed to have a close look in this case. This is a mother
17 who reports to Dr. Poppleton that she is from a very
18 traditional conservative Indian family. And what looks one
19 way in a conservative traditional family of Indian culture
20 looks different when looked at through U.S. standards and
21 eyes. So there wasn't that comparison. And those are
22 alternative hypotheses that if somebody had done a thorough
23 assessment, would have been addressed because those pieces
24 were in his data. He just didn't do anything with the data
25 points.

1 Q Let me ask you about the cultural part of it. What
2 potential impact would the cultural consideration have in
3 assessment of this family or the control dynamics or risk of
4 harm?

5 A So it can explain some behaviors. Is it a patriarchal
6 culture where dads are in control or husbands are more in
7 control of finances and decision-making? It could be a
8 cultural aspect of discipline. It can be a cultural aspect
9 of seeing women as less important as compared to men. Male
10 children are more important than female children. Those are
11 cultural issues that we in the United States see a certain
12 way, but other cultures may act and respond differently.

13 So we have to have cultural diversity and understanding
14 and delve into those so we're not putting the wrong normative
15 sample or population on a family.

16 Q And when you said that one of the alternate hypotheses was
17 that the child may have attachment or secure attachment to
18 both parents. What in Dr. Poppleton's report leads you to
19 surmise that that could be an alternate hypothesis?

20 A He talked about both of his parents in very positive
21 terms. He misses his dad. Wanted to see his dad. Wondered
22 what was going on, why he wasn't speaking to his dad.

23 So there were positive statements made about his father.
24 There were positive statements made about his mother. He
25 relies on her for his caregiving and nurturing. Those were

1 all in the interviews with the child.

2 So you would build alternative hypotheses. Is this a
3 securely attached child? Is this an anxiously attached
4 child? Or is this a disorganized child? The data tends to
5 -- just that little bit of data speaks positively. So it
6 leans towards he has a secure attachment with both parents.

7 MR. MIN: No further questions at this time, Your
8 Honor.

9 THE COURT: Cross examination?

10 MS. SKINNER: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MS. SKINNER:

13 Q Dr. Day, you testified that you looked at the data that
14 Dr. Poppleton looked at, right?

15 A Yes.

16 Q And then you looked at a whole bunch of other stuff that
17 Dr. Poppleton didn't look at, right?

18 A You know, I don't think so. I was given the data that I
19 was told Dr. Poppleton had access to. That's my belief in
20 the listing of data points.

21 Q So when you indicate that you received e-mails from Ms. --
22 from the parties from November 2017 through August 2024, who
23 provided those to you?

24 A Mr. Min did. All of this data was provided by his office.
25 My understanding was that was information that Dr. Poppleton

1 also had access to.

2 Q Who told you that?

3 A Mr. Min.

4 Q And where in Dr. Poppleton's report does it say that he
5 considers, for his report, e-mails between the parties from
6 November 2017 through August 2024?

7 A His report does not list any data that he considered. He
8 says the mother gave him data; he does not identify what that
9 data is.

10 Q Okay. So we can't be certain that the information that
11 you're listing that you reviewed is the same information that
12 Dr. Poppleton reviewed?

13 MR. MIN: Objection, Your Honor. Is counsel
14 representing that -- because they certainly know what
15 Dr. Poppleton reviewed because they provided that material to
16 us -- are they representing that these are not materials that
17 Dr. Poppleton reviewed? Because if so -- if that's not their
18 representation, then I believe this is a fairly disingenuous
19 line of questioning, Your Honor.

20 MS. SKINNER: Your Honor, I don't know what Mr. Min
21 provided to his expert, and that's what I'm asking this
22 expert about.

23 THE COURT: You can ask that specific question,
24 counsel.

25 MS. SKINNER: Okay.

1 Q And so when you describe these documents that you looked
2 at, including a calendar and financial statements and the
3 stock transfer agreement, where did you receive those
4 documents?

5 A As I said, everything I've received was from Mr. Min, who
6 represented to me that that was the underlying data that
7 Dr. Poppleton had been provided.

8 Q So when you indicate that you reviewed the Supreme Court
9 case *Golan v. Saada*, your understanding was that
10 Dr. Poppleton also reviewed that report -- that case?

11 A That's my understanding. I have no other source of
12 information other than this was Dr. Poppleton's information.

13 MR. MIN: Your Honor, again, I find this to be
14 somewhat disingenuous because we have communications from
15 respondent's counsel where they provide us this case as
16 something that Dr. Poppleton reviewed. So, again, unless
17 they're -- have some good-faith basis to suggest that this
18 was not reviewed by Dr. Poppleton, even though they
19 represented to us and gave us these documents, purportedly as
20 reviewed by Dr. Poppleton, I find this line of questioning
21 very disingenuous.

22 THE COURT: Counsel, haven't we heard testimony from
23 Dr. Poppleton specifically about the documents he reviewed
24 and considered?

25 MR. MIN: I don't think the question was asked, the

1 totality of all the documents reviewed, but I can represent
2 to this court that we received communications from
3 respondent's counsel stating that these were documents that
4 were part of Dr. Poppleton's review.

5 So, again -- I didn't ask that question because I didn't
6 truthfully find it to be that interesting or relevant. But
7 if respondent is going down a line of questioning trying to
8 assert that she looked at documents that Dr. Poppleton
9 didn't, when they provided documents to us representing that
10 he reviewed certain documents, it's very disingenuous and
11 misleading, Your Honor.

12 THE COURT: Let's clarify from the witness what she
13 reviewed. I'm not sure what the nature of your specific
14 objection is, counsel, or the legality of the objection. But
15 is there a specific question, counsel, that you can get to
16 that deals specifically with what this witness reviewed in
17 her preparation or what document that she reviewed that would
18 suggest what Dr. Poppleton reviewed? Do you understand?

19 MS. SKINNER: Yes. Thank you, Your Honor.

20 And I was going through the documents that she reviewed
21 and then asking her understanding of those. But I can
22 rephrase.

23 THE COURT: As well as clarifying what documents she
24 was of the understanding that Dr. Poppleton reviewed. That's
25 two different categories.

1 MS. SKINNER: Thank you, Your Honor.

2 Q So, Dr. Day, is it your testimony that every document that
3 you reviewed, you understood from petitioner's counsel to be
4 a document that Dr. Poppleton also himself reviewed?

5 A Yes, ma'am.

6 Q You indicate that you reviewed --

7 A Let me clarify that. I can't say that he reviewed them.
8 I was told they were in his possession and provided to him.
9 Whether he reviewed them or not, I don't know. But that's
10 what was represented to me.

11 Q Thank you for that clarification.

12 A You're welcome.

13 Q You indicate that you reviewed a Singapore police force
14 record dated January 8, 2024. What are you aware of occurred
15 on January 8th of 2024?

16 A Can you just tell me where you're reading from? It will
17 save some time.

18 Q On Page 1 of your rebuttal report, bullet point No. 4 of
19 the documents that you reviewed.

20 A That would be her statement about the argument they had
21 and the fight over the telephone. It's her statement.

22 Q And so your understanding -- your report here lists that
23 that took place on January 8th of 2024. Is that what this
24 states?

25 A The date of that report was January 8, 2024, yes. It

1 doesn't mean it happened on that date. They generated a
2 report and dated it on that date.

3 Q So your understanding was that there was police
4 involvement with this family January 8, 2024, or prior?

5 A So I don't know the answer to that. All I have are the
6 documents.

7 Q Do you have a reason to doubt the veracity of the
8 documents?

9 A No. But you're asking me about the veracity of those
10 documents. And they're not my documents, so I can't swear to
11 them.

12 Q So these are documents that you considered in your report,
13 correct?

14 A I didn't consider them, because I'm not drawing
15 conclusions or opinions. I'm listing the documents that were
16 provided to me that came from Dr. Poppleton.

17 Q Okay. You just --

18 A So I list what he has -- I'm sorry.

19 Q You're saying you're listing what you understood
20 Dr. Poppleton to have had in his possession?

21 A That's correct.

22 Q But you go one step further in your report and indicate to
23 this court that you reviewed the documents?

24 A Yes. I've read the documents. I wanted to know what
25 Dr. Poppleton did. That's why I say I reviewed the four

1 corners of his material to look at the consistency and
2 standard of care. He did not list these in his report. I
3 had no idea when I saw his report that he had these data
4 points.

5 Q What do you mean you had no idea that he had this
6 information?

7 A So when his report was published, he said, "I received
8 some documents from the wife in this case." He doesn't
9 identify the documents or what he relied on.

10 Q And so subsequent to your receipt of Dr. Poppleton's
11 report is when you received these documents yourself?

12 A Yes.

13 Q So you reviewed a Singapore police force report that was
14 dated March 10, 2024; is that right?

15 A Yes.

16 Q So you reviewed a document where there was police
17 involvement with this family March 10th of 2024, or before?

18 A Yes.

19 Q In a description of one document that you reviewed, you
20 reviewed an e-mail purportedly from mother to father that was
21 dated October 14th of 2024 in which mother let father know
22 that she and the child had landed, and then you put in
23 quotes, "some time ago," unquote, in Washington. Why did you
24 add quotes to that phrase within your description of the
25 document?

1 A Because those are her words exactly from the documents.
2 So any time you quote somebody, you are to put them in
3 quotes.

4 Q Why, out of all of the words in that document, did you
5 choose to quote those three words?

6 A So refer me where you are so I can read it and give you a
7 better answer. What page are you on? Two?

8 Q On Page 2 of your rebuttal report, bullet point 9.

9 A Because I found it was striking that she did not tell him
10 when that happened, that she kept it very vague. So when I
11 read it, I didn't know if she had landed a week ago, a month
12 ago, five minutes ago. I thought it was an interesting use
13 of language. And I thought it was relevant in looking at the
14 case.

15 Q Why does that matter to rebutting Dr. Poppleton's letter?

16 A If there is a hypothesis that mom is a restrictive
17 gatekeeper or she's influencing or is a hypothesis that she
18 is not giving dad information about the son, that is a piece
19 of information that you would utilize in coming to your final
20 conclusions or generating hypotheses. It's a piece of data
21 that would fit in a category.

22 Q When was the first time you have ever read the *UCLA*
23 *Women's Law Journal* article "You Can and You Should: How
24 Judges Can Apply the Hague Abduction Convention to Protect
25 Victims of Domestic Violence"?

1 A When is the first time I've ever read that? Is that your
2 question?

3 Q Yes.

4 A I can't tell you. This was not the first time I've read
5 it.

6 Q When was the first time you read the "Hague Domestic
7 Violence Expert Paper No. 2. The Grave Risk Exception and
8 Domestic Violence"?

9 A I believe this was the first time I may have read that.

10 Q You indicate, when giving your overview of Dr. Poppleton's
11 report, that he summarized his findings "Stating he was
12 providing an opinion on grave risk of harm or intolerable
13 situation and the age and maturity of the child." Didn't you
14 write that?

15 A I did.

16 Q But Dr. Poppleton did not provide an opinion, right?

17 A Correct. So his report begins with: I'm going to do
18 these things. And he ends by saying: I'm not doing these
19 things.

20 Q You indicate that Dr. Poppleton stated he was providing an
21 opinion. But he did not state that, correct?

22 A If you want to show me his report, I believe it's in his
23 referral, the first page. And he said "I've been asked to
24 provide opinions." I don't have his report right in front of
25 me. Oh, here it is. "I was retained to reference two issues

1 under Article 13 and provide information to the court on
2 them. The first is grave risk of harm or intolerable
3 situation if the child in this case is ordered to go to
4 Singapore. The second is related to the objections of
5 child." He talks about how he's going to do the framework
6 and analysis and what he did in order to address those
7 issues.

8 Q So he did not state he was providing an opinion, correct?

9 A He didn't use those words. But as a reader of this
10 report, that's what the expectation is based on, the wording.
11 He's going to examine these two issues. Here are the issues
12 I'm going to examine. I interpret that as rendering a
13 conclusion or an opinion.

14 Q Right. But in your report you said that he stated he was
15 providing an opinion. His letter nowhere states that he is
16 providing an opinion, correct?

17 A I agree. The word is my word on "opinion" and my
18 interpretation of his statement of "examine."

19 Q You indicated that Dr. Poppleton needed to get written
20 consent in order to meet with the mother and child over Zoom,
21 correct?

22 A Yes.

23 Q Are you aware of whether he did receive written consent
24 from mother?

25 A I have no indication, except his testimony that I listened

1 to that he said he explained it. He didn't say he got it in
2 writing.

3 Q And so if mother's counsel reached out to Dr. Poppleton,
4 in writing, and indicated on behalf of mother that she
5 consented, would that satisfy that requirement for written
6 consent?

7 A No.

8 Q Why not?

9 A Written consent is a document that you provide to the
10 patient or client to inform them about the process and
11 procedures, the risks and the liability of doing so. It's an
12 explanation document. So the person has what you call
13 "informed consent" about what they're going to be
14 participating in.

15 Those are the guidelines in the specialty guidelines for
16 forensic psychology and AFCC guidelines for family-law cases,
17 when using -- when working in a psycho-legal context.

18 In addition to written, you are then supposed to explain
19 the written document to the person to make sure that they
20 understand the written consent. Consent is extremely
21 important in a psycho-legal context.

22 Q And the child and mother are not patients of
23 Dr. Poppleton, correct?

24 A It has nothing to do with patients. It could be a
25 patient, if you're going in for treatment. It can be court

1 ordered to go in for an evaluation --

2 Q Dr. Day, I had one question to you. I asked you whether
3 or not the child and mother were patients of Dr. Poppleton.

4 A Technically they were patients or clients. I don't know
5 which word Dr. Poppleton uses in his psycho-legal context.

6 Q The guidelines are just that, guidelines, not
7 requirements, correct?

8 A Correct. Any time you are a member of an organization,
9 you are to follow the guidelines to the best of your ability.

10 Q Okay. And wouldn't you agree that meeting in this type of
11 a scenario with a child via Zoom one-on-one could be a better
12 setup than meeting in person with a child who is intently
13 focused on video gaming and not on the doctor?

14 A So you wouldn't know that prior to meeting the child. So
15 you wouldn't have the ability to make that determination
16 ahead of time, because you don't know the child. And what it
17 identifies in the AFCC guidelines is Zooming with children is
18 more of a risk than meeting with a child in person where you
19 can see all of the information. So there is a caveat in 13.2
20 about children and Zooming. You have to understand their age
21 and their maturity.

22 Q But you didn't make any kind of analysis about whether
23 this child would be particularly better in a setup on a
24 direct one-on-one Zoom with no distractions versus an
25 in-person meeting with a lot of distractions?

1 A So I have no opinion about this child and whether Zoom or
2 in person is a better fit. My comments are about
3 Dr. Poppleton's use of informed consent.

4 Q Dr. Favaro in this case did not get any information from
5 professional collaterals, like the child's doctor, correct?

6 A Not to my knowledge.

7 Q Didn't get any direct information from the live-in maid
8 that the parties had in Singapore, correct?

9 A Not to my knowledge, no.

10 Q And Dr. Favaro didn't do any IQ testing on the child?

11 A No, he did not.

12 Q Dr. Favaro didn't do any personality testing on anybody,
13 correct?

14 A Correct.

15 Q Dr. Favaro didn't do an HCR risk assessment, correct?

16 A That's only to do with adults. So, no, he didn't evaluate
17 either of the adults.

18 Q Even though there were clearly allegations of domestic
19 violence in this case, right?

20 A So there are allegations of coercive control and some
21 physical abuse in this case. You are correct.

22 Q And Dr. Favaro did not do any kind of a trauma checklist
23 for the child, right?

24 A That's correct.

25 Q You indicate, as far as maturity, there's a category of

1 development, I believe, between the ages of six and 11 years
2 old. Do you remember that testimony?

3 A I do.

4 Q What does the literature and studies show about the
5 percentage of the adult population that reaches that next
6 level of maturity after the six- to 11-year-old category?

7 A I don't think I understand your question. What's the next
8 age range?

9 Q How many of the -- are you aware of any studies that
10 describe what percentage of the U.S. population reaches the
11 next level of maturity?

12 A I'm not aware of any studies that talks about a
13 percentage.

14 Q You testified, and I'm not sure if I misheard you, but I
15 thought your testimony was that the child did not report
16 physical or psychological abuse. Was that your testimony?

17 A Yes.

18 Q Okay. So you -- are you discounting Dr. Favaro and
19 Dr. Poppleton's report where the child describes being hit
20 and pinched?

21 A Hitting and pinching is not physical abuse; it's
22 discipline. And unless you have more information about
23 bruising or trauma from those forms of discipline, they would
24 not be categorized as abuse.

25 Q Are you talking about some legal standard in the state of

1 Florida about what abuse is?

2 A General knowledge on what abuse is. As far as I know, it
3 is still allowed in the United States to use corporal
4 punishment with your children. You're not allowed to injure
5 your children.

6 Q You're telling me there's some type of a federal law that
7 you're referring to about the United States law on abuse? Is
8 that what you're saying?

9 A No. In general from my work in the child protection arena
10 for many years, there is a standard in which abuse, physical
11 abuse is judged. And it is not discipline, physical or
12 corporal punishment. It is an injury, bruising, a mark left
13 on a child.

14 Q What do you mean by there is a standard? What can you
15 cite to me?

16 A So out in Colorado there is the center that established
17 what child abuse is. And from that standard the national
18 child abuse centers have been established in each state. I
19 cannot remember the name of the place in Colorado. I
20 apologize. I wasn't expecting that question. And from that,
21 back in the '50s, child abuse was defined for the very first
22 time. And it was physical abuse that was defined.

23 Out of that, then child sexual abuse became defined and
24 recognized. And through the years, we've then gone on to
25 define child emotional abuse and psychological abuse. Is it

1 the Kempe Center? I think it's the Kempe Center.

2 So that's how we started in the U.S., many years ago,
3 trying to define it and set up child advocacy centers using
4 those definitions. And training professionals all over the
5 country to recognize the difference between different types
6 of child abuse.

7 Q So is it your testimony that the standard says that in the
8 United States a parent may hit a child because the parent
9 wants them to do or refrain from doing something, so long as
10 that does not leave trauma or visible injury?

11 A That's my understanding of the standard in the use of
12 corporal punishment.

13 Q What about when a parent shakes a young child in order to
14 cause another parent to engage in sexual demands; is that
15 abuse?

16 A So shaking has various stages and depth. Certainly we
17 know that shaken baby -- when you shake and cause head trauma
18 or a contrecoup injury, it's child abuse. Grabbing the child
19 by the arm and shaking a child gently is on the other end of
20 the continuum. And we see parents do that all the time
21 without injuring the child.

22 Q I gave the caveat that it was for the purpose, right, of
23 causing the other parent to engage in that parent's sexual
24 demands.

25 A That's a different issue than whether the child was

1 injured. It is never appropriate to use a child in any
2 context that is abusive or controlling.

3 Q Well, that's what we're trying to talk about, is what
4 you're testifying is the definition of abuse and controlling.
5 And so you're saying it's never appropriate to act in a
6 physical manner in the way that I describe shaking a child,
7 if to do so is to coerce the other parent to engage in sexual
8 demands.

9 A That's what you said.

10 Q Do you agree?

11 A And I concurred that never -- it's never appropriate to
12 use a child in any context to coerce another parent.

13 Q You testified that in this case an evaluator would want to
14 look at cultural differences when analyzing domestic violence
15 or abuse. Did you testify about that?

16 A Yes.

17 Q What about basic human rights to not be hit? Would you
18 agree that that spans all cultures?

19 A Well, I don't agree that it spans all cultures. I do
20 agree that that is a basic human right. That doesn't mean
21 it's practiced.

22 Q Would it be a basic human right to be free from abuse?

23 A Yes.

24 Q Would it be a basic human right to be free from another
25 person's control?

1 A I would hope so, yes.

2 Q You testified that, in your opinion, Dr. Poppleton could
3 not opine on a risk to this child because Dr. Poppleton only
4 interviewed the child and talked with mother; is that right?

5 A Correct.

6 Q But isn't that what Dr. Favaro did when making his opinion
7 on a risk? He just interviewed the child and talked with the
8 father?

9 A He went farther. I believe he has the school records, if
10 I'm recalling correctly. He did the Child Behavior Checklist
11 with the father. And he looked at additional records.

12 Q School records didn't have anything to do with an analysis
13 of risk of harm, right?

14 A No. But it helps us understand the maturity of the child
15 and his resiliency, how he's doing academically, did the
16 school have any concerns.

17 Q So we're talking about this, what you call, I believe, is
18 a national definition of abuse. But that's not what the
19 Hague treaty talks about. What is grave -- how is grave risk
20 defined under the Hague Convention?

21 MR. MIN: Objection. Calls for a legal conclusion.

22 THE COURT: To the extent of her knowledge, she may
23 answer that question.

24 THE WITNESS: Your Honor, I didn't hear you. Can I
25 answer?

1 THE COURT: Yes. You can answer, to the extent of
2 your knowledge.

3 A Okay. It is the potential of physical or psychological
4 harm to a child if returned to their habitual residence.

5 Q That the child would be subject to the physical or
6 psychological harm, or that the child would be exposed to the
7 physical or psychological harm?

8 MR. MIN: Objection, Your Honor. This witness's
9 understanding of a conclusion this court will have to make is
10 irrelevant to these proceedings.

11 THE COURT: Counsel, I'll let the witness testify as
12 to her understanding. But I think you're getting into the
13 arena of her giving a legal opinion. The court does that,
14 not the witness.

15 MS. SKINNER: Thank you, Your Honor. I'll move on.

16 THE COURT: Please do.

17 Q In your review of Dr. Poppleton's letter, you found that
18 mother had reported sexual coercion. What was that?

19 A What was what, the sexual coercion?

20 Q Yes.

21 A I don't recall exactly, without looking at the report.
22 What I recall, in a general summary, is that he would
23 influence her by making her feel bad, shaming her, not
24 permitting her to say no, making demands about sexual issues
25 that she was not comfortable with. That was my summary of

1 what he reported she said.

2 Q And then you saw, in Dr. Poppleton's letter, that he
3 described mother's statements, that when mother would not
4 give father sex, that he would hit the child. You saw that
5 in Dr. Poppleton's report?

6 A I didn't hear the word. Kick the child?

7 Q Hit.

8 A Hit. I don't remember that. I remember her saying as an
9 infant he would shake the child if she refused. I don't
10 remember kick.

11 Q Hit, with an "H."

12 A Hit, I'm sorry. I don't remember hit either.

13 Q And you were here present when father testified that he
14 has hit his child, correct?

15 A Yes.

16 Q When he testified that he has pinched the child?

17 A Yes.

18 Q Your rebuttal report doesn't comment on the financial
19 control that Dr. Poppleton took into consideration. Why not?

20 A Why? I didn't comment on a lot of what Dr. Poppleton
21 said. If he stated something that's a fact, I'm not talking
22 about the facts, per se. I'm talking about the methodology
23 that he utilized in this psycho-legal evaluation.

24 Q And part of his methodology is to report and look at
25 certain aspects of intimate partner violence that mother has

1 alleged, correct?

2 A Yes. And when he did that, he also put the caveat that
3 this is her report, I don't know if it's a valid report. So
4 he didn't do any investigation as to the validity of her
5 statements.

6 Q Right. But he's setting up the framework that financial
7 control is a part of intimate partner violence, correct?

8 A Correct. So she says that. That doesn't make it a true
9 event. And we as psychologists are not financial
10 professionals, and we don't do financial analyses. That
11 would fall to somebody else. So he's raised it as a
12 hypothesis. But there are other conclusions or alternative
13 hypotheses that could also be generated. Such as, she had
14 her own money. He knew she had money. He gave her an
15 allowance. That allowance was enough. He was paying the
16 bills. We see those kinds of things in divorces all the
17 time.

18 So we want to make sure when we say something, that we
19 then analyze that data to see if it's one of those divorce
20 things that people do to hurt each other, or if it's
21 financial abuse.

22 THE COURT: Counsel, we're right at 4:30.

23 We'll take our recess for the day and pick up tomorrow
24 morning at nine.

25 MR. MIN: Your Honor, can I ask one question?

1 Your Honor made a ruling about Dr. Favaro, so do we need
2 to submit briefing tonight or has that decision been
3 rendered?

4 THE COURT: I think the court is satisfied that
5 that's as far as we can go.

6 MR. MIN: Thank you, Your Honor.

7 (Adjourned.)

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